



# **VIRGINIA MOTOR VEHICLE DEALER LICENSING LAWS**

**2009**

## **Title 46.2: Motor Vehicles Chapter 15: Motor Vehicle Dealers**

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## **Motor Vehicle Dealers**

### **Article 1. Motor Vehicle Dealers Generally.**

#### **§ 46.2-1500. Definitions.**

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"Board" means the Motor Vehicle Dealer Board.

"Certificate of origin" means the document provided by the manufacturer of a new motor vehicle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motor vehicle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Distributor" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and who sells or distributes new motor vehicles pursuant to a written agreement with the manufacturer, to franchised motor vehicle dealers in the Commonwealth.

"Distributor branch" means a branch office licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and maintained by a distributor for the sale of motor vehicles to motor vehicle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motor vehicle" means a motor vehicle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motor vehicle will be resold or otherwise retransferred only to the manufacturer or distributor of the motor vehicle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been employed continuously by the dealer for at least five years.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new motor vehicles of a particular line-make or late model or factory repurchase motor vehicles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated

with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the motor vehicle or its manufacturer or distributor. The term shall include any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or factory repurchase motor vehicle dealer" means a dealer in late model or factory repurchase motor vehicles, including a franchised new motor vehicle dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase motor vehicles.

"Franchised motor vehicle dealer" means a dealer in new motor vehicles that has a franchise agreement with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers.

"Fund" means the Motor Vehicle Dealer Board Fund.

"Independent motor vehicle dealer" means a dealer in used motor vehicles.

"Late model motor vehicle" means a motor vehicle of the current model year and the immediately preceding model year.

"Line-make" means the name of the motor vehicle manufacturer or distributor and a brand or name plate marketed by the manufacturer or distributor.

"Manufacturer" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and engaged in the business of constructing or assembling new motor vehicles and, in the case of trucks, also means a person engaged in the business of manufacturing engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by the final manufacturer or assembler of the truck.

"Motor vehicle" means the same as provided in § 46.2-100, except, for the purposes of this chapter, it shall not include (i) trailers and semitrailers; (ii) manufactured homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36; (iii) motor homes; (iv) motorcycles; (v) nonrepairable vehicles, as defined in § 46.2-1600; (vi) salvage vehicles, as defined in § 46.2-1600; or (vii) mobile cranes that exceed the size or weight limitations as set forth in § 46.2-1105, 46.2-1110, 46.2-1113, or Article 17 (§ 46.2-1122 et seq.) of Chapter 10 of this title.

"Motor vehicle dealer" or "dealer" means any person who:

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or

2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him; or

3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within any 12 consecutive months.

The term "motor vehicle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.

2. Public officers, their deputies, assistants, or employees, while performing their official duties.

3. Persons other than business entities primarily engaged in the leasing or renting of motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.

4. Persons dealing solely in the sale and distribution of funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1519, 46.2-1520 and 46.2-1548.

5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle.

6. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

7. Any person licensed to sell real estate who sells a manufactured home or similar vehicle in conjunction with the sale of the parcel of land on which the manufactured home or similar vehicle is located.

8. Any person who permits the operation of a motor vehicle show or permits the display of motor vehicles for sale by any motor vehicle dealer licensed under this chapter.

9. An insurance company authorized to do business in the Commonwealth that sells or disposes of vehicles under a contract with its insured in the regular course of business.

10. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of vehicles owned by others.

11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

12. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motor vehicle dealer.

13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

14. The State Department of Social Services or local departments of social services.

"Motor vehicle salesperson" or "salesperson" means (i) any person who is hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any person who is an independent contractor as defined by the United States Internal Revenue Code shall be deemed not to be a motor vehicle salesperson.

"Motor vehicle show" means a display of motor vehicles to the general public at a location other than a dealer's location licensed under this chapter where the vehicles are not being offered for sale or exchange during or as part of the display.

"New motor vehicle" means any vehicle which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration motor vehicle, or for the personal and business transportation of the manufacturer, distributor, dealer, or any of his employees, (iii) has not been used except for limited use necessary in moving or road testing the vehicle prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v)

has the manufacturer's certification that it conforms to all applicable federal motor vehicle safety and emission standards. Notwithstanding provisions (i) and (iii), a motor vehicle that has been previously sold but not titled shall be deemed a new motor vehicle if it meets the requirements of provisions (ii), (iv), and (v).

"Original license" means a motor vehicle dealer license issued to an applicant who has never been licensed as a motor vehicle dealer in Virginia or whose Virginia motor vehicle dealer license has been expired for more than 30 days.

"Relevant market area" means as follows:

1. In metropolitan localities, the relevant market area shall be a circular area around an existing franchised dealer with a population of 250,000, not to exceed a radius of 10 miles, but in no case less than seven miles.

2. If the population in an area within a radius of 10 miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of 15 miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that area within the 15-mile radius.

3. In all other cases the relevant market area shall be an area within a radius of 20 miles around an existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater. In any case where the franchise agreement is silent as to area of responsibility, the relevant market area shall be the greater of an area within a radius of 20 miles around an existing franchised dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

In determining population for this definition, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more motor vehicles to a buyer for his use and not for resale, in which the price of the vehicle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to motor vehicle dealers or wholesalers other than to consumers; a sale to one who intends to resell.

"Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this section.

"Wholesale auction" means an auction of motor vehicles restricted to sales at wholesale.

#### **§ 46.2-1501. General powers of Commissioner.**

The Commissioner shall promote the interest of the retail buyers of motor vehicles and endeavor to prevent unfair methods of competition and unfair or deceptive acts or practices.

#### **§ 46.2-1502.**

Repealed by Acts 1995, cc. 767 and 816.

**§ 46.2-1503. Motor Vehicle Dealer Board.**

A. The Motor Vehicle Dealer Board is hereby created. The Board shall consist of nineteen members appointed by the Governor, subject to confirmation by the General Assembly. Every member appointed by the Governor must be a citizen of the United States and must be a resident of Virginia. The Governor may remove any member as provided in subsection B of § 2.2-108. The initial terms of eight of the members appointed in July of 1995 shall commence when appointed and shall be for terms ending on June 30, 1997. Nine members shall be appointed for four-year terms. The members shall be at-large members and, insofar as practical, should reflect fair and equitable statewide representation.

B. Nine members shall be licensed franchised motor vehicle dealers who have been licensed as such for at least two years prior to being appointed by the Governor and seven members shall be licensed independent motor vehicle dealers who (i) have been licensed as such for at least two years prior to being appointed by the Governor and (ii) are not also franchised motor vehicle dealers. One of the independent dealers appointed to the Board shall be a licensed motor vehicle dealer primarily engaged in the business of renting vehicles, and one shall be a licensed independent dealer primarily engaged in the motor vehicle salvage business. One member shall be an individual who has no direct or indirect interest, other than as a consumer, in or relating to the motor vehicle industry.

C. Appointments shall be for terms of four years, and no person other than the Commissioner of the Department of Motor Vehicles and the Commissioner of Agriculture and Consumer Services shall be eligible to serve more than two successive four-year terms. The Commissioner of the Department of Motor Vehicles shall serve as chairman of the Board. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until thirty days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. Any person appointed to fill a vacancy may serve two additional successive terms.

D. The Commissioner of the Department of Motor Vehicles and the Commissioner of Agriculture and Consumer Services shall be ex officio voting members of the Board.

E. Members of the Board shall be reimbursed their actual and necessary expenses incurred in carrying out their duties, such reimbursement to be paid from the special fund referred to in § 46.2-1520.

**§ 46.2-1503.1. Board to employ Executive Director.**

The Board shall employ an executive director who shall serve at the pleasure of the Board. He shall direct the affairs of the Board and keep records of all proceedings, transactions, communications, and official acts of the Board. He shall be custodian of all records of the Board and perform such duties as the Board may require. The Executive Director shall call a meeting of the Board at the direction of the chairman or upon written request of three or more Board members. The Executive Director, with approval of the Board, may employ such additional staff as needed. The annual salary of the Executive Director shall be at Level II of the Executive Compensation Plan contained in the Appropriation Act.

**§ 46.2-1503.2. State Personnel and Public Procurement Acts not applicable.**

A. The Executive Director and all staff employed by the Board shall be exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.) of Title 2.2. Personnel actions under this exemption shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation.

B. The Board and the Executive Director shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq.) of Title 2.2.

**§ 46.2-1503.3. Motor Vehicle Dealer Board Fund; receipts; disbursements.**

The Motor Vehicle Dealer Board Fund is established as a special fund in the state treasury. Except as otherwise provided in this chapter, all fees collected as provided in this chapter and by regulations promulgated by the Board, shall be paid into the state treasury immediately upon collection and credited to the Motor Vehicle Dealer Board Fund. Any interest income shall accrue to the Motor Vehicle Dealer Board Fund. All disbursements from the Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the Executive Director as authorized by the Board.

**§ 46.2-1503.4. General powers and duties of Board.**

The powers and duties of the Board shall include, but not be limited to the following:

1. To establish the qualifications of applicants for certification or licensure, provided that all qualifications shall be necessary to ensure competence and integrity.
2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure, including the preparation, administration and grading of examinations.
3. To certify or license qualified applicants as motor vehicle dealers and motor vehicle salespersons.
4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Board.
5. To levy on licensees special assessments necessary to cover expenses of the Board.
6. To revoke, suspend, or fail to renew a certificate or license for just cause as set out in Articles 2 (§ 46.2-1508 et seq.), 3.1 (§ 46.2-1527.1 et seq.), 4 (§ 46.2-1528 et seq.), 8 (§ 46.2-1574 et seq.), and 9 (§ 46.2-1580 et seq.) of this chapter or enumerated in regulations promulgated by the Board.
7. To ensure that inspections are conducted relating to the motor vehicle sales industry and to ensure that all licensed dealers and salespersons are conducting business in a professional manner, not in violation of any provision of Articles 2 (§ 46.2-1508 et seq.), 3.1 (§ 46.2-1527.1 et seq.), 4 (§ 46.2-1528 et seq.), 7 (§ 46.2-1566 et seq.), 8 (§ 46.2-1574 et seq.), and 9 (§ 46.2-1580 et seq.) of this chapter and within the lawful regulations promulgated by the Board.
8. To receive complaints concerning the conduct of persons and businesses licensed by the Board and to take appropriate disciplinary action if warranted.
9. To enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board.
10. To establish committees of the Board, appoint persons to such committees, and to promulgate regulations establishing the responsibilities of these committees. Each of these committees shall include at least one Board member and the Advertising, Dealer Practices and Transaction Recovery Fund committees shall include at least one citizen member who is not licensed or certified by the Board. The Board may establish one of each committee in each DMV District. Committees to be established shall include, but not be limited to the following:
  - a. Advertising;
  - b. Licensing;
  - c. Dealer Practices;
  - d. Franchise Review and Advisory Committee; and
  - e. Transaction Recovery Fund.
11. To do all things necessary and convenient for carrying into effect Articles 2, 3.1, 4, 8 and 9 of this chapter or as enumerated in regulations promulgated by the Board.

**§ 46.2-1503.5. Biennial report.**

The Board shall submit a biennial report to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain, at a minimum, the following information: (i) a summary of the Board's fiscal affairs, (ii) a description of the Board's activities, (iii) statistical information regarding the administrative hearings and decisions of the Board, and (iv) a general summary of all complaints received against licensees and the procedures used to resolve the complaints.

**§ 46.2-1504. Board's powers with respect to hearings under this chapter.**

The Board may, in hearings arising under this chapter, except as provided for in Article 7 (§ 46.2-1566 et seq.), determine the place in the Commonwealth where they shall be held; subpoena witnesses; take depositions of witnesses residing outside the Commonwealth in the manner provided for in civil actions in courts of record; pay these witnesses the fees and mileage for their attendance as is provided for witnesses in civil actions in courts of record; and administer oaths.

**§ 46.2-1505. Suit to enjoin violations.**

The Board, whenever it believes from evidence submitted to the Board that any person has been violating, is violating or is about to violate any provision of this chapter, in addition to any other remedy, may bring an action in the name of the Commonwealth to enjoin any violation of this chapter.

**§ 46.2-1506. Regulations.**

The Board may promulgate regulations requiring persons licensed under this chapter to keep and maintain records reasonably required for the enforcement of §§ 46.2-112 and 46.2-629, and any other regulations, not inconsistent with the provisions of this chapter, as it shall consider necessary for the effective administration and enforcement of this chapter. A copy of any regulation promulgated under this section shall be mailed to each motor vehicle dealer licensee thirty days prior to its effective date.

**§ 46.2-1506.1. Additional training.**

The Board may promulgate regulations specifying additional training or conditions for individuals seeking certification, licensure, or renewal of certificates or licenses.

**§ 46.2-1507. Penalties.**

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter may be assessed a civil penalty by the Board. No such civil penalty shall exceed \$1,000 for any single violation. Civil penalties collected under this chapter shall be deposited in the Transportation Trust Fund.

**§ 46.2-1508. Licenses required.**

It shall be unlawful for any person to engage in business in the Commonwealth as a motor vehicle dealer or salesperson without first obtaining a license as provided in this chapter. It shall be unlawful for any person to engage in business in the Commonwealth as a manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative without first obtaining a license as provided in Chapter 19 (§ 46.2-1900 et seq.) of this title. Any nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, after having obtained a nonprofit



organization certificate as provided in this chapter, may consign donated motor vehicles to licensed Virginia motor vehicle dealers. Any person licensed in another state as a motor vehicle dealer may sell motor vehicles at wholesale auctions in the Commonwealth after having obtained a certificate of dealer registration as provided in Chapter 19 of this title. The offering or granting of a motor vehicle dealer franchise in the Commonwealth shall constitute engaging in business in the Commonwealth for purposes of this section, and no new motor vehicle may be sold or offered for sale in the Commonwealth unless the franchisor of motor vehicle dealer franchises for that line-make in the Commonwealth, whether such franchisor is a manufacturer, factory branch, distributor, distributor branch, or otherwise, is licensed under Chapter 19 of this title. In the event a license issued under Chapter 19 to a franchisor of motor vehicle dealer franchises is suspended, revoked, or not renewed, nothing in this section shall prevent the sale of any new motor vehicle of such franchisor's line-make manufactured in or brought into the Commonwealth for sale prior to the suspension, revocation or expiration of the license.

Violation of any provision of this section shall constitute a Class 1 misdemeanor.

## **Article 2. Motor Vehicle Dealer Licenses.**

### **§ 46.2-1508.1. Licensure of certain nonprofit organizations.**

A. Any nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code that (i) receives title to motor vehicles as qualified charitable gifts to the organization, (ii) provides no more than twelve of these donated vehicles in any twelve-month period to low-income persons, as defined in § 2.2-5400, in need of transportation, and (iii) receives from the recipients of the vehicles only reimbursement for the costs of repairs, towing, titles, taxes, license fees and inspection fees shall be required to obtain a dealer's license. However, such nonprofit organization shall be exempt from the requirements of § 46.2-1510, Article 3.1 (§ 46.2-1527.1 et seq.) of Chapter 15 of this title, §§ 46.2-1533, and 46.2-1534. Transactions of such nonprofit organization shall not be subject to recovery from the Motor Vehicle Transaction Recovery Fund.

B. Upon application to and approval by the Board, any nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code may be issued a nonprofit organization certificate authorizing it to consign donated motor vehicles to licensed Virginia motor vehicle dealers when the nonprofit organization receives title to such motor vehicles as qualified charitable gifts and titles the vehicles in the name of the nonprofit organization.

### **§ 46.2-1508.2. Display, parking, selling, advertising sale of certain used motor vehicles prohibited.**

No owner or lessee of any real property shall permit the display or parking of more than five used motor vehicles within any 12-month period on such real property for the purpose of selling or advertising the sale of such used motor vehicles by the owner or lessee of such vehicles unless exempted pursuant to this section.

No owner or lessee of any used motor vehicle shall display or park such used motor vehicle on the real property of another for the purpose of selling or advertising the sale of such used motor vehicle if the display or parking of such vehicle will cause the owner or lessee of the real property to be in violation of the provisions of this section.

No owner or lessee of any used motor vehicle shall display or park such used motor vehicle on the real property of another for the purpose of selling or advertising the sale of such used motor vehicle unless the owner or lessee of such vehicle has the right to occupy such property pursuant to a lease or

other occupancy document or prior written permission of the owner or lessee of the real property. Copies of such written permission shall be posted on the inside of a side window of the motor vehicle and must be retained by both the property owner or lessee and by the vehicle owner for at least 12 months and shall be made available to law-enforcement officers or agencies, the Board, and local zoning officials upon request.

The provisions of this section shall not apply if (i) the owner or lessee of the vehicle displayed or parked is employed by the owner or lessee of the real property on which the vehicle is displayed or parked; (ii) the owner or lessee of the vehicle displayed or parked is conducting business with the owner or lessee of the real property on which the vehicle is parked or displayed at the time such vehicle is displayed or parked; (iii) the real property on which a vehicle is parked is a parking lot for which a fee is charged for the use of such parking lot, the owner or lessee of the parked vehicle has paid the fee for the use of such parking lot, and such vehicle is legitimately parked on the property for purposes other than displaying, selling, or advertising the sale of such vehicle; or (iv) the vehicle displays a dealer's license plate pursuant to § 46.2-1550 and the licensed dealer is not displaying for sale or selling a motor vehicle at a location other than his specific business location without first meeting the requirements of § 46.2-1516.

The provisions of this section shall also not apply to (i) any motor vehicle dealer licensed under this chapter, or (ii) any owner or lessee of real property who permits the display or parking of five or more used motor vehicles on such real property by a licensed motor vehicle dealer within any 12-month period for the purpose of selling or advertising the sale of such used motor vehicles.

Except as permitted in § 46.2-631 and except as permitted in this section, no owner or lessee of any real property shall permit any used motor vehicle to be displayed or parked on such real property for the purpose of selling or advertising the sale of such used motor vehicle if such vehicle is not lawfully titled and registered in the name of the individual or entity offering such vehicle for sale as provided in Chapter 6 (§ 46.2-600 et seq.) of this title. However, this limitation shall not apply if the individual offering the vehicle for sale is an immediate family member of the owner or lessee of the real property on which the motor vehicle is displayed or parked for the purpose of selling or advertising the sale of such vehicle.

Except as permitted in § 46.2-631, no person shall advertise, display, sell, or offer for sale any used motor vehicle unless such vehicle is lawfully titled and registered in such person's name as provided in Chapter 6 (§ 46.2-600 et seq.) of this title. However, this limitation shall not apply if the person offering the vehicle for sale is a motor vehicle dealer licensed under this chapter or has the authority pursuant to law to advertise, display, sell, or offer for sale the used motor vehicle.

Notwithstanding any other provision of law, any law-enforcement officer or agency, local zoning official, or the owner or lessee of any real property upon which a vehicle is displayed or parked in violation of this section for longer than 48 consecutive hours after a notice on a form approved by the Board has been affixed or placed on the vehicle by a law-enforcement officer or agency, Board representative, local zoning official, or the owner or lessee of the real property upon which the vehicle is displayed or parked, may have any such vehicle towed from such real property and stored at the expense of the owner or lessee of such vehicle and may then dispose of such vehicle as provided in § 46.2-1203.

The provisions of this section shall not be deemed to eliminate, change, or supersede the requirement for any person to obtain a license under this chapter if such person engages in any conduct or activity for which a license is required under this chapter.

**§ 46.2-1509. Application for license or certificate of dealer registration.**

Application for license or certificate of dealer registration under this chapter shall be made to the Board and contain such information as the Board shall require. The application shall be accompanied by the fee as required by the Board.

The Board shall require, in the application or otherwise, information relating to the matters set forth in § 46.2-1575 as grounds for refusing licenses, certificates of dealer registration, and to other pertinent matters requisite for the safeguarding of the public interest, including, if the applicant is a dealer in new motor vehicles with factory warranties, a copy of a current service agreement with the manufacturer or with the distributor, requiring the applicant to perform within a reasonable distance of his established place of business, the service, repair, and replacement work required of the manufacturer or distributor by such vehicle warranty. All of these matters shall be considered by the Board in determining the fitness of the applicant to engage in the business for which he seeks a license or certificate of dealer registration.

**§ 46.2-1510. Dealers required to have established place of business.**

No license shall be issued to any motor vehicle dealer unless he has an established place of business, owned or leased by him, where a substantial portion of the sales activity of the business is routinely conducted and which:

1. Satisfies all local zoning regulations;
2. Has sales, service, and office space devoted exclusively to the dealership of at least 250 square feet in a permanent, enclosed building not used as a residence;
3. Houses all records the dealer is required to maintain by § 46.2-1529;
4. Is equipped with a desk, chairs, filing space, a working telephone listed in the name of the dealership, and working utilities including electricity and provisions for space heating;
5. Displays a sign and business hours as required by this chapter; and
6. Has contiguous space designated for the exclusive use of the dealer adequate to permit the display of at least ten vehicles.

Any dealer licensed on or before July 1, 1995, shall be considered in compliance with subdivisions 2 and 6 of this section for that licensee.

**§ 46.2-1511. Dealer-operator to have certificate of qualification.**

A. No license shall be issued to any franchised motor vehicle dealer or any independent motor vehicle dealer owned by a franchised motor vehicle dealer or its dealer-operator and operated by the dealer-operator of a franchised motor vehicle dealer unless the dealer-operator holds a valid certificate of qualification issued by the Board. Such certificate shall be issued only on application to the Board, payment of an application fee of no more than \$50 as determined by the Board, the successful completion of an examination prepared and administered by the Board, and other prerequisites as set forth in this subsection. However, any individual who is the dealer-operator of a licensed dealer on July 1, 1995, shall be entitled to such a certificate without examination on application to the Board made on or before January 1, 1996.

The Board may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

B. No license shall be issued to any independent motor vehicle dealer, except as permitted in subsection A unless the dealer-operator holds a valid certificate of qualification issued by the Board. Such certificate shall be issued only on application to the Board, payment of an application fee of no more than \$50, as determined by the Board, the successful completion of an examination approved by

the Board, and other prerequisites as set forth in this subsection. The Board may establish minimum qualifications for applicants and, on and after January 1, 2006, shall require applicants for an original independent dealer-operator certificate of qualification to be issued pursuant to this subsection to satisfactorily complete a course of study prior to taking the examination. The Board shall develop the course curriculum and set course fees and may approve qualified persons to prepare and present such courses and to administer the examination. This subsection shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 46.2-1512. Salesperson to have certificate of qualification.**

No license shall be issued to any motor vehicle salesperson unless he holds a valid certificate of qualification issued by the Board. A certificate shall be issued only on application to the Board, payment of the required application fee of no more than fifty dollars as determined by the Board, the successful completion of an examination prepared and administered by the Board, and other prerequisites as set forth in this section. Any individual who is licensed as a salesperson on July 1, 1995, shall be entitled to such a certificate without examination on application to the Board made on or before January 1, 1996.

The Board may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

**§ 46.2-1513. Continued operation on loss of a dealer-operator holding certificate of qualification.**

Each dealer shall notify the Board in writing immediately when a dealer-operator who holds a certificate of qualification dies, becomes disabled, retires, is removed, or for any other cause ceases to act as dealer-operator. The dealer may continue to operate for 120 days thereafter without a dealer-operator and may be granted approval by the Board to operate for an additional 60 days on application and good cause shown for such delay.

**§ 46.2-1514. Action on applications; hearing on denial; denial for failure to have established place of business.**

The Board shall act on all applications for a license or certificate of dealer registration under this chapter within sixty days after receipt by either granting or refusing the application. Any applicant denied a license or certificate shall, on his written request filed within thirty days, be given a hearing at a time and place determined by the Board or a person designated by the Board. All hearings under this section shall be public and shall be held promptly. The applicant may be represented by counsel.

Any applicant denied a license for failure to have an established place of business as provided in § 46.2-1510 may not, nor shall anyone, apply for a license for premises for which a license was denied for thirty days from the date of the rejection of the application.

**§ 46.2-1515. Location to be specified; display of license; change of location.**

The licenses of motor vehicle dealers shall specify the location of each place of business, branch or other location occupied or to be occupied by the licensee in conducting his business and the license issued therefor shall be conspicuously displayed at each of the premises. In the event any licensee intends to change a licensed location, he shall provide the Board thirty-days' advance written notice and a successful inspection of the new location shall be required prior to approval of a change of location. The Board shall endorse the change of location on the license, without charge, if the new location is within the same county or city. A change in location to another county or city shall require a new license and fee.

**§ 46.2-1516. Supplemental sales locations.**

The Board may issue a license for a licensed motor vehicle dealer to display for sale or sell vehicles at locations other than his established place of business, subject to compliance with local ordinances and requirements.

A permanent supplemental license may be issued for premises less than 500 yards from the dealer's established place of business, provided a sign is displayed as required for the established place of business. A supplemental license shall not be required for premises otherwise contiguous to the established place of business except for a public thoroughfare.

A temporary supplemental license may be issued for a period not to exceed seven days, provided that the application is made fifteen days prior to the sale. A temporary supplemental license for the sale of new motor vehicles may be issued only for locations within the dealer's area of responsibility, as defined in his franchise or sales agreement, unless proof is provided that all dealers in the same line-make in whose areas of responsibility, as defined in their franchise or sales agreements, where the temporary supplemental license is sought do not oppose the issuance of the temporary license.

A temporary supplemental license for sale of used motor vehicles may be issued only for the county, city, or town in which the dealer is licensed pursuant to § 46.2-1510, or for a contiguous county, city, or town. Temporary licenses may be issued without regard to the foregoing geographic restrictions where the dealer operating under a temporary license provides notice, at least thirty days before any proposed sale under a temporary license, to all other dealers licensed in the jurisdiction in which the sale will occur of the intent to conduct a sale and permits any locally licensed dealer who wishes to do so to participate in the sale on the same terms as the dealer operating under the temporary license. Any locally licensed dealer who chooses to participate in the sale must obtain a temporary supplemental license for the sale pursuant to this section.

A temporary supplemental license may be issued for the sale of boat trailers at a boat show. Any such license shall be valid for no more than fourteen days. Application for such a license shall be made and such license obtained prior to the opening of the show. Temporary supplemental licenses for sale of boat trailers at boat shows may be issued for any boat show located anywhere in the Commonwealth without notification of or approval by other boat trailer dealers.

**§ 46.2-1517. Changes in form of ownership, make, name.**

Any change in the form of ownership or the addition or deletion of a partner shall require a new application, license, and fee.

Any addition or deletion of a franchise or change in the name of a dealer shall require immediate notification to the Department and the Board, and the Board shall endorse the change on the license without a fee. The change of an officer or director of a corporation shall be made at the time of license renewal.

**§ 46.2-1518. Display of salesperson's license; notice on termination.**

No salesperson shall be employed by more than one dealer, unless the dealers are owned by the same person.

Each dealer shall post and maintain in a place conspicuous to the public a list of salespersons employed.

Each salesperson shall carry his license when engaged in his business and shall display it on request.

Each dealer shall notify the Board in writing not later than the tenth day following the month of the termination of any licensed salesperson's employment. In lieu of written notification, the license of the terminated salesperson may be returned to the Board annotated "terminated" on the face of the license and signed and dated by the dealer-operator, owner, or officer.

**§ 46.2-1519. License and registration fees; additional to other licenses and fees required by law.**

A. The fee for each license and registration year or part thereof shall be determined by the Board, subject to the following:

1. For motor vehicle dealers, not more than \$300 for each principal place of business, plus not more than \$40 for each supplemental license.

2. For motor vehicle salespersons, not more than \$50.

B. The licenses, registrations, and fees required by this chapter are in addition to licenses, taxes, and fees imposed by other provisions of law and nothing contained in this chapter shall exempt any person from any license, tax, or fee imposed by any other provision of law.

C. The fee for issuance to a nonprofit organization of a certificate pursuant to subsection B of § 46.2-1508.1 shall be \$25 per year or any part thereof.

D. No nonprofit organization granted a certificate pursuant to subsection B of § 46.2-1508.1 shall, either orally or in writing, assign a value to any donated vehicle for the purpose of establishing tax deduction amounts on any federal or state income tax return.

E. The Board may authorize discounts and other incentives to encourage licensees to conduct transactions with the Board (i) by means of electronic technologies and (ii) for multi-year periods.

**§ 46.2-1520. Collection of license and registration fees; payments from fund.**

All licensing and registration fees provided for in this chapter, except as identified in Article 3.1 (§ 46.2-1527.1 et seq.) of this chapter shall be collected by the Board and paid into the state treasury and set aside as a special fund to meet the expenses of the Board.

**§ 46.2-1521. Issuance, expiration, and renewal of licenses and certificates of registration.**

A. All licenses and certificates of registration issued under this chapter shall be issued for a period of 12 consecutive months except, at the discretion of the Board, the periods may be adjusted as is necessary to distribute the licenses and certificates as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license and certificate of registration shall be renewed annually on application by the licensee or registrant and by payment of fees required by law, the renewal to take effect on the first day of the succeeding month.

B. Licenses and certificates of registration issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the Board or postmarked not more than 30 days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the Board or postmarked no more than 30 days after the expiration date of such license or certificate of registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1519.

C. For dealers and salespersons who have served outside of the United States in the armed services of the United States, licenses and certificates issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in § 46.2-1519 are received by the Board or postmarked not more than 60 days from the date they are no longer serving outside the United States and they have:

1. Held a valid license or certificate issued by the Board at the time the person began service in the armed forces outside of the United States;
2. Not performed sales activities during the period of the person's military service; and
3. Submitted to the Board orders or other military documentation demonstrating that they have served outside of the United States in the armed services of the United States and it has been less than 61 days from the date they are no longer serving outside the United States.

Prior to renewing a license or certificate under this subsection, the applicant shall notify the Board of their intentions and verify that they are in compliance with all other requirements established by the Board and set forth in this title.

D. The Board may offer an optional multiyear license. When such option is offered and chosen by the licensee, all annual and 12-month fees due at the time of licensing shall be multiplied by the number of years or fraction thereof for which the license will be issued.

E. The Board may issue a salesperson's license to an applicant, as required by § 46.2-1508, even though the applicant is not employed by a motor vehicle dealer if (i) the applicant has been certified pursuant to § 46.2-1512 and is employed by a person that has contracted in writing with a dealer or dealers to provide temporary personnel for the sale of products and services to include but not be limited to providing payment, financing and leasing alternatives; and offering and selling extended service agreements, prepaid maintenance agreements, and similar products and services that are sold in connection with the sale of a vehicle; provided, however, that such persons do not negotiate for the sale of the vehicle but may complete the required paperwork for the sale of the vehicle in addition to the other products and services being offered or to provide training to salespersons employed by a dealer, and (ii) the applicant meets the other qualifications to be licensed as a salesperson under this chapter. The requirements of §§ 46.2-1518 and 46.2-1537 shall not apply to any such salesperson so licensed, provided that any salesperson so licensed:

1. May only act as a salesperson for a dealer who has a contract with the salesperson's employer as provided in this subsection;
2. Shall carry his license when engaged in business and shall display it upon request; and
3. Need not be the person who signs the buyer's order on behalf of the dealer, but the name of that salesperson shall be listed on the buyer's order in any transaction in which the salesperson engages.

### **Article 3. Motor Vehicle Transaction Recovery Fund.**

#### **§§ 46.2-1522. through 46.2-1527.**

Repealed by Acts 1994, c. 478, effective April 8, 1994.

#### **§ 46.2-1527.1. Motor Vehicle Transaction Recovery Fund established.**

All fees in this article shall be deposited in the Motor Vehicle Transaction Recovery Fund, hereinafter referred to in this article as "the Fund." The Fund shall be a special fund in the state treasury to pay claims against the Fund and for no other purpose, except the Board may expend moneys from the interest earned on the Fund for the administration of this article, in accordance with the general appropriation act. The Fund shall be used to satisfy unpaid judgments, as provided for in § 46.2-1527.3. Any interest income shall accrue to the Fund. The Board shall maintain an accurate record of all transactions involving the Fund. The minimum balance of the Fund shall be \$250,000. In order to maintain the minimum Fund balance, the Board may levy a special assessment on all dealers participating in the Fund.

Every applicant renewing a motor vehicle dealer's license shall pay, in addition to other license fees, an annual Fund fee of \$100, and every applicant for a motor vehicle salesperson's license shall pay, in addition to other license fees, an annual Fund fee of \$10, prior to license issue. However, annual Fund renewal fees from salespersons shall not exceed \$100 per year from an individual dealer. These fees shall be deposited in the Motor Vehicle Transaction Recovery Fund.

Applicants for an original motor vehicle dealer's license shall pay an annual Fund fee of \$250 each year for three consecutive years. During this period, the \$250 Fund fee will take the place of the annual \$100 Fund fee.

In addition to the \$250 annual fee, applicants for an original dealer's license shall have a \$50,000 bond pursuant to § 46.2-1527.2 for three consecutive years. Only those renewing licensees who have not been the subject of a claim against their bond or against the Fund for three consecutive years shall pay the annual \$100 fee and will no longer be required to pay the \$250 annual fee or hold the \$50,000 bond.

In addition to other license fees, applicants for an original Certificate of Dealer Registration or its renewal shall pay a Fund fee of \$60.

The Board may suspend or reinstate collection of Fund fees.

The provisions of this section shall not apply to manufactured home dealers as defined in § 36-85.16, T&M vehicle dealers as defined in § 46.2-1900, trailer dealers as defined in § 46.2-1992, motorcycle dealers as defined in § 46.2-1993, and nonprofit organizations issued certificates pursuant to subsection B of § 46.2-1508.1.

The provisions of this section shall not apply to applicants for the renewal of a motor vehicle dealer's license where such applicants have not been the subject of a claim against a bond issued pursuant to § 46.2-1527.2 or against the Fund for three years and such applicants elect to maintain continuous bonding pursuant to Article 3.2 (§ 46.2-1527.9 et seq.) of this chapter. Such applicants shall not participate in the Fund and shall be exempt from the payment of any Fund fees.

#### **§ 46.2-1527.2. Bonding requirements for applicants for an original license.**

Before the Board shall issue to an applicant an original license, the applicant shall obtain and file with the Board a bond in the amount of \$50,000. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General. The bond shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. The Board may, without holding a hearing, suspend the dealer's license during the period that the dealer does not have a sufficient bond on file.

If a person suffers any of the following: (i) loss or damage in connection with the purchase or lease of a motor vehicle by reason of fraud practiced on him or fraudulent representation made to him by a licensed motor vehicle dealer or one of the dealer's salespersons acting within his scope of employment, (ii) loss or damage by reason of the violation by a dealer or salesperson of any provision of this chapter in connection with the purchase or lease of a motor vehicle, or (iii) loss or damage resulting from a breach of an extended service contract entered into on or after the effective date of this act, as defined by § 59.1-435, that person shall have a claim against the dealer and the dealer's bond, and may recover such damages as may be awarded to such person by final judgment of a court of competent jurisdiction against the dealer as a proximate result of such loss or damage up to but not exceeding the amount of the bond, from such surety, who shall be subrogated to the rights of such person against the dealer or salesperson. The liability of such surety shall be limited to actual damages, and shall not include any punitive damages or attorneys' fees assessed against the dealer or salesperson.



In those cases in which a dealer's surety shall be liable pursuant to this section, the surety shall be liable only for the first \$50,000 in claims against the dealer. Thereafter, the Fund shall be liable for the next \$50,000 in those cases in which the Fund itself may be liable. The aggregate liability of the dealer's surety to any and all persons, regardless of the number of claims made against the bond or the number of years the bond remains in force, shall in no event exceed \$50,000.

The dealer's surety shall notify the Board when a claim is made against a dealer's bond, when a claim is paid and when the bond is cancelled. Such notification shall include the amount of a claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation. The bond may be cancelled as to future liability by the dealer's surety upon thirty days' notice to the Board.

### **§ 46.2-1527.3. Recovery from Fund, generally.**

Except as otherwise provided in this chapter, whenever any person is awarded a final judgment in a court of competent jurisdiction in the Commonwealth for (i) any loss or damage in connection with the purchase or lease of a motor vehicle by reason of any fraud practiced on him or fraudulent representation made to him by a licensed or registered motor vehicle dealer participating in the Motor Vehicle Transaction Recovery Fund or one of a dealer's salespersons acting for the dealer or within the scope of his employment or (ii) any loss or damage by reason of the violation by a dealer or salesperson participating in the Motor Vehicle Transaction Recovery Fund of any of the provisions of this chapter in connection with the purchase of a motor vehicle on or after January 1, 1989, or the lease of a motor vehicle on or after October 1, 1998, the judgment creditor may file a verified claim with the Board, requesting payment from the Fund of the amount unpaid on the judgment subject to the following conditions:

1. The claim shall be filed with the Board no sooner than 30 days and no later than 12 months after the judgment becomes final along with the evidence of compliance with subdivision 3 below.

2. The Board shall consider for payment claims submitted by retail purchasers of motor vehicles, and for purchases of motor vehicles by licensed or registered motor vehicle dealers who contribute to the Fund. The Board shall also consider for payment claims submitted by lessees of motor vehicles leased on or after October 1, 1998, from licensed or registered motor vehicle dealers who contribute to the Fund.

3. If the final judgment from a court of competent jurisdiction includes, as part of the judgment, an award of attorney fees and court costs, the Fund may include those in its payment of the claim if (i) the claimant had previously submitted to the trial court a detailed and itemized affidavit by counsel for the judgment creditor seeking such fees and costs, including a breakdown of the hours worked and the subject matter of those hours; (ii) said itemized affidavit formed the basis of the court's award of such fees; and (iii) a copy of such affidavit is provided to the Board with the judgment creditor's claim. If the award of attorney fees and costs by the trial court was not based on a detailed and itemized affidavit from counsel for the judgment creditor with a breakdown of the hours worked, then the Board may review and limit any claim for attorney fees to those attorney fees directly attributable to that portion of the final judgment that is determined to be a compensable claim by the Board against the Fund, and the Board may require a detailed itemization from counsel before considering such claim for attorney fees.

#### **§ 46.2-1527.4. Opportunity to intervene.**

Any action instituted by a person against a licensed or registered dealer or a salesperson, which may become a claim against the Fund, shall be served to the Board in the manner prescribed by law. All subsequent pleadings and documents shall also be served to the Board. Included in such service shall be an affidavit stating all acts constituting fraud or violations of this chapter. Upon service of process, the Board, or duly authorized representative, shall have the right to request leave of the court to intervene. The person shall submit such pleadings or documents to the Board by certified mail or the equivalent.

#### **§ 46.2-1527.5. Limitations on recovery from Fund.**

The maximum claim of one judgment creditor against the Fund based on an unpaid final judgment arising out of any loss or damage by reason of a claim submitted under § 46.2-1527.2 or § 46.2-1527.3 involving a single transaction, shall be limited to \$20,000, regardless of the amount of the unpaid final judgment of one judgment creditor.

The aggregate of claims against the Fund based on unpaid final judgments arising out of any loss or damage by reason of a claim submitted under § 46.2-1527.3 involving more than one transaction shall be limited to \$100,000, regardless of the total amounts of the unpaid final judgments of judgment creditors.

However, aggregate claims against the Fund under § 46.2-1527.2 shall be limited to \$50,000 and then only after the dealer's \$50,000 bond has been exhausted.

If a claim has been made against the Fund, and the Board has reason to believe that there may be additional claims against the Fund from other transactions involving the same licensee or registrant, the Board may withhold any payment from the Fund involving the licensee or registrant for a period not to exceed the end of the relevant license or registration period. After this period, if the aggregate of claims against the licensee or registrant exceeds \$100,000, a total of \$100,000 shall be prorated among the claimants and paid from the Fund in proportion to the amounts of their unpaid final judgments against the licensee or registrant.

However, claims against motor vehicle dealers and salespersons participating in the Motor Vehicle Transaction Recovery Fund pursuant to § 46.2-1527.2 shall be prorated when the aggregate exceeds \$50,000. Claims shall be prorated only after the dealer's \$50,000 bond has been exhausted.

On receipt of a verified claim filed against the Fund, the Board shall forthwith notify the licensee or registrant who is the subject of the unpaid judgment that a verified claim has been filed and that the licensee or registrant should satisfy the judgment debt. If the judgment debt is not fully satisfied 30 days following the date of the notification by the Board, the Board shall make payment from the Fund subject to the other limitations contained in this article.

Excluded from the amount of any unpaid final judgment on which a claim against the Fund is based shall be any sums representing (i) interest, (ii) punitive damages, and (iii) exemplary damages. Awards from the Fund shall be limited to reimbursement of costs paid to the dealer for all charges related to the vehicle including without limitation, the sales price, taxes, insurance, and repairs; other out of pocket costs related to the purchase, insuring and registration of the vehicle, and to the loss of use of the vehicle by the purchaser.

If at any time the Fund is insufficient to fully satisfy any claims or claim filed with the Board and authorized by this article, the Board shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Board. However, claims by retail purchasers shall take precedence over other claims.

**§ 46.2-1527.6. Assignment of claimant's rights to the Board; payment of claims.**

Subject to the provisions of this article and on the claimant's execution and delivery to the Board of an assignment to the Board of his rights against the licensee or registrant, to the extent he received satisfaction from the Fund, the Board shall pay the claimant from the Fund the amount of the unpaid final judgment.

**§ 46.2-1527.7. Revocation of license or certificate of registration on payment from the Fund.**

On payment by the Board to a claimant from the Fund as provided in this article, the Board shall immediately notify the licensee or registrant in writing of the Board's payment to the claimant and request full reimbursement be made to the Board within thirty days of the notification. Failure to reimburse the Board in full within the specified period shall cause the Board to immediately revoke the license or certificate of the dealer or the license of a salesperson whose fraud, fraudulent representation, or violation of this chapter resulted in this payment. Any person whose license or certificate is revoked shall not be eligible to apply for a license or certificate as a motor vehicle dealer or a license as a salesperson until the person has repaid in full the amount paid from the Fund on his account, plus interest at the rate of eight percent per year from the date of payment.

**§ 46.2-1527.8. No waiver by the Board of disciplinary action against licensee or registrant.**

Nothing contained in this article shall limit the authority of the Board to take disciplinary action against any licensee or registrant for any violation of this chapter or any regulation promulgated thereunder, nor shall full repayment of the amount paid from the Fund on a licensee's or registrant's account nullify or modify the effect of any disciplinary action against that licensee or registrant for any violation.

**§ 46.2-1527.9. Continuous bonding requirements for Fund nonparticipants.**

Applicants for a renewal of a motor vehicle dealer's license may elect to obtain and continuously maintain a bond in the amount of \$100,000 in lieu of participation in the Motor Vehicle Transaction Recovery Fund, provided that such applicants have not been the subject of a claim against a bond issued pursuant to § 46.2-1527.2, or against the Fund for three consecutive years. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General and shall be filed with the Board. The bond shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. In those cases in which the surety of a dealer electing continuous bonding under this section shall be liable pursuant to this section, the maximum liability to one claimant against the surety by reason of a claim involving a single transaction shall be limited to \$20,000 regardless of the amount of the claim by one claimant, and the aggregate liability of the dealer's surety to any and all persons, regardless of the number of claims made against the bond or the number of years the bond remains in effect shall in no event exceed \$100,000.

An applicant for a renewal of a motor vehicle dealer's license who is a member of a nonprofit organization established under 26 U.S.C. § 501(c) (6) that provides on behalf of its membership a blanket or umbrella bond in the amount of \$1 million satisfies the bonding requirements of this section. When posted, a blanket or umbrella bond shall be considered a dealer bond for the purposes of § 46.2-1527.10. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General and shall be filed with the Board. In those cases in which the nonprofit organization's surety shall be liable pursuant to § 46.2-1527.10, the maximum liability to one

claimant against the surety by reason of a claim involving a single transaction shall be limited to \$20,000, regardless of the amount of the claim by one claimant, and the aggregate liability of the nonprofit organization's surety to any and all persons for claims against a single dealer shall in no event exceed \$100,000. In those cases in which the nonprofit organization's surety shall be liable pursuant to § 46.2-1527.10, the maximum liability to any and all persons, regardless of the number of claims made against the bond or the number of years the bond remains in force shall in no event exceed \$1 million.

The Board may, without holding a hearing, suspend the dealer's license during the period that the dealer does not have a sufficient bond on file. Dealers bonded under this article and those salespersons employed by such dealers shall be exempt from the Fund fees specified in § 46.2-1527.1.

**§ 46.2-1527.10. Recovery on bond.**

With respect to a motor vehicle dealer electing continuous bonding under § 46.2-1527.9, whenever any person is awarded a final judgement in a court of competent jurisdiction in the Commonwealth against the dealer for (i) any loss or damage in connection with the purchase or lease of a motor vehicle by reason of fraud practiced on him or fraudulent representation made to him by the dealer or one of the dealer's salespersons acting within the scope of his employment, (ii) any loss or damage by reason of the violation by the dealer or salesperson of any provision of this chapter in connection with the purchase or lease of a motor vehicle, or (iii) any loss or damage resulting from a breach of an extended service contract, as defined in § 59.1-435, entered into on or after July 1, 2003, the judgement creditor shall have a claim against the dealer bond for such damages as may be awarded such person in final judgement and unpaid by the dealer, and may recover such unpaid damages up to but not exceeding the maximum liability of the surety as set forth in § 46.2-1527.9 from the surety who shall be subrogated to the rights of such person against the dealer or salesperson. The liability of such surety shall be limited to actual damages and attorneys' fees assessed against the dealer or salesperson as part of the underlying judgement but this section does not authorize the award of attorneys' fees in the underlying judgement. The liability of such surety shall not include any sums representing interest or punitive or exemplary damages assessed against the dealer or salesperson.

The dealer's surety shall notify the Board when a claim is made against a dealer's bond, when a claim is paid, and when the bond is cancelled. Such notification shall include the amount of claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation. The bond may be cancelled as to future liability by the dealer's surety upon 30 days' notice to the Board.

**§ 46.2-1527.11. No waiver by the Board of disciplinary action against licensee or registrant.**

Nothing contained in this article shall limit the authority of the Board to take disciplinary action against any licensee or registrant for any violation of this chapter or any regulation promulgated under this chapter.

**Article 4. Conduct of Business.**

**§ 46.2-1528. Examination or audit of licensee; costs.**

The Board or authorized representatives of the Board may examine, during the posted business hours, the records required to be maintained by this chapter. If a licensee is found to have violated this chapter or any order of the Board, the actual cost of the examination shall be paid by the licensee so

examined within thirty days after demand therefor by the Board. The Board may maintain an action for the recovery of these costs in any court of competent jurisdiction.

**§ 46.2-1529. Dealer records.**

All dealer records regarding employees; lists of vehicles in inventory for sale, resale, or on consignment; vehicle purchases, sales, trades, and transfers of ownership; collections of taxes; titling, uninsured motor vehicle, and registration fees; odometer disclosure statements; records of permanent dealer registration plates assigned to the dealer and temporary transport plates and temporary certificates of ownership; and other records required by the Department or the Board shall be maintained on the premises of the licensed location. The Board may, on written request by a dealer, permit his records to be maintained at a location other than the premises of the licensed location for good cause shown. All dealer records shall be preserved in original form or in film, magnetic, or optical media (including but not limited to microfilm, microfiche, or other electronic media) for a period of five years in a manner that permits systematic retrieval. Certain records may be maintained on a computerized record-keeping system with the prior approval of the Board.

**§ 46.2-1529.1. Sales of used motor vehicles by dealers; disclosures; penalty.**

A. If, in any retail sale by a dealer of a used motor vehicle of under 6,000 pounds gross vehicle weight for use on the public highways, and normally used for personal, family or household use, the dealer offers an express warranty, the dealer shall provide the buyer a written disclosure of this warranty. The written disclosure shall be the Buyer's Guide required by federal law, shall be completely filled out and, in addition, signed and dated by the buyer and incorporated as part of the buyer's order.

B. A dealer may sell a used motor vehicle at retail "AS IS" and exclude all warranties only if the dealer provides the buyer, prior to sale, a separate written disclosure as to the effect of an "AS IS" sale. The written disclosure shall be conspicuous and contained on the front of the buyer's order and printed in not less than bold, ten-point type and signed by the buyer: "I understand that this vehicle is being sold 'AS IS' with all faults and is not covered by any dealer warranty. I understand that the dealer is not required to make any repairs after I buy this vehicle. I will have to pay for any repairs this vehicle will need." A fully completed Buyer's Guide, as required by federal law, shall be signed and dated by the buyer and incorporated as part of the buyer's order.

C. Failure to provide the applicable disclosure required by subsection A or B of this section shall be punishable by a civil penalty of no more than \$1,000. Any such civil penalty shall be paid into the general fund of the state treasury. Furthermore, if the applicable disclosure required by subsection A or B of this section is not provided as required in this section, the buyer may cancel the sale within thirty days. In this case, the buyer shall have the right to return the vehicle to the dealer and obtain a full refund of all payments made toward the purchase of the vehicle, less any damage to the vehicle incurred while ownership was vested in the purchaser, and less a reasonable amount for the use not to exceed one-half the amount allowed per mile by the Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes. Notice of the provisions of this subsection shall be included as part of every disclosure made under subsection A or B of this section.

**§ 46.2-1530. Buyer's order.**

A. Every motor vehicle dealer shall complete, in duplicate, a buyer's order for each sale or exchange of a motor vehicle. A copy of the buyer's order form shall be made available to a prospective buyer during the negotiating phase of a sale and prior to any sales agreement. The completed original shall be retained for a period of four years in accordance with § 46.2-1529, and a duplicate copy shall be delivered to the purchaser at the time of sale or exchange. A buyer's order shall include:

1. The name and address of the person to whom the vehicle was sold or traded.
2. The date of the sale or trade.
3. The name and address of the motor vehicle dealer selling or trading the vehicle.
4. The make, model year, vehicle identification number and body style of the vehicle.
5. The sale price of the vehicle.
6. The amount of any cash deposit made by the buyer.

7. A description of any vehicle used as a trade-in and the amount credited the buyer for the trade-in. The description of the trade-in shall be the same as outlined in subdivision 4 of this subsection.

8. The amount of any sales and use tax, title fee, uninsured motor vehicle fee, registration fee, purchaser's on-line systems filing fee, or other fee required by law for which the buyer is responsible and the dealer has collected. Each tax and fee shall be individually listed and identified.

9. The net balance due at settlement.

10. Any item designated as "processing fee," and the amount charged by the dealer, if any, for processing the transaction. As used in this section processing includes obtaining title and license plates for the purchaser, but shall not include any "purchaser's on-line systems filing fee" as defined in § 46.2-1530.1 or any "dealer's manual transaction fee" as defined in § 46.2-1530.2.

11. Any item designated as "dealer's business license tax," and the amount charged by the dealer, if any.

12. (A) For sales involving dealer-arranged financing, the following notice, printed in bold type no less than 10-point: **"THIS SALE IS CONDITIONED UPON APPROVAL OF YOUR PROPOSED RETAIL INSTALLMENT SALE CONTRACT AS SUBMITTED TO OR THROUGH THE DEALER. IF THAT PROPOSED RETAIL INSTALLMENT SALE CONTRACT IS NOT APPROVED UNDER THE TERMS AGREED TO WITH THE DEALER, YOU MAY CANCEL THIS SALE AND ANY DOWN PAYMENT AND/OR TRADE-IN YOU SUBMITTED WILL BE RETURNED TO YOU, PROVIDED THAT ANY VEHICLE DELIVERED TO YOU BY THE DEALER PURSUANT TO THIS AGREEMENT IS RETURNED TO THE DEALER IN THE SAME CONDITION AS DELIVERED TO YOU, NORMAL WEAR AND TEAR EXCEPTED, WITHIN 24 HOURS OF WRITTEN OR ORAL NOTICE TO YOU OF THE CREDIT DENIAL."**

A dealer may provide the notice required by § 46.2-1530(a)(12)(B) with respect to vehicles purchased prior to July 1, 2010 instead of the notice required by this § 46.2-1530(a)(12)(A).

(B) If the dealer delivers to the customer a vehicle purchased by the customer on or after July 1, 2010 that is conditional on dealer-arranged financing, the following notice, printed in bold type no less than 10-point: **"IF YOU ARE FINANCING THIS VEHICLE PLEASE READ THIS NOTICE YOU ARE PROPOSING TO ENTER INTO A RETAIL INSTALLMENT SALES CONTRACT WITH THE DEALER. PART OF YOUR CONTRACT INVOLVES FINANCING THE PURCHASE OF YOUR VEHICLE. IF YOU ARE FINANCING THIS VEHICLE AND THE DEALER INTENDS TO TRANSFER YOUR FINANCING TO A FINANCE PROVIDER SUCH AS A BANK, CREDIT UNION OR OTHER LENDER, YOUR VEHICLE PURCHASE DEPENDS ON THE FINANCE PROVIDER'S APPROVAL OF YOUR PROPOSED RETAIL INSTALLMENT SALES"**

CONTRACT. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS APPROVED WITHOUT A CHANGE THAT INCREASES THE COST OR RISK TO YOU OR THE DEALER, YOUR PURCHASE CANNOT BE CANCELLED. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS NOT APPROVED THE DEALER WILL NOTIFY YOU VERBALLY OR IN WRITING. YOU CAN THEN DECIDE TO PAY FOR THE VEHICLE IN SOME OTHER WAY OR YOU OR THE DEALER CAN CANCEL YOUR PURCHASE. IF THE SALE IS CANCELLED, YOU NEED TO RETURN THE VEHICLE TO THE DEALER WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR. ANY DOWN PAYMENT OR TRADE-IN YOU GAVE THE DEALER WILL BE RETURNED TO YOU. IF YOU DO NOT RETURN THE VEHICLE WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE OF CANCELLATION, THE DEALER MAY LOCATE THE VEHICLE AND TAKE IT BACK WITHOUT FURTHER NOTICE TO YOU AS LONG AS THE DEALER FOLLOWS THE LAW AND DOES NOT CAUSE A BREACH OF THE PEACE WHEN TAKING THE VEHICLE BACK. IF THE DEALER DOES NOT RETURN YOUR DOWN PAYMENT AND ANY TRADE-IN WHEN THE DEALER GETS THE VEHICLE BACK IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR, THE DEALER MAY BE LIABLE TO YOU UNDER THE VIRGINIA CONSUMER PROTECTION ACT."

13. For sales of used motor vehicles, the disclosure required by § 46.2-1529.1.

If the transaction does not include a policy of motor vehicle liability insurance, the seller shall stamp or mark on the face of the bill of sale in boldface letters no smaller than 18 point type the following words: "No Liability Insurance Included."

A completed buyer's order when signed by both buyer and seller may constitute a bill of sale.

B. The Board shall approve a buyer's order form and each dealer shall file with each original license application its buyer's order form, on which the processing fee amount is stated.

C. If a processing fee is charged, that fact and the amount of the processing fee shall be disclosed by the dealer. Disclosure shall be by placing a clear and conspicuous sign in the public sales area of the dealership. The sign shall be no smaller than eight and one-half inches by eleven inches and the print shall be no smaller than one-half inch, and in a form as approved by the Board.

#### **§ 46.2-1530.1. Purchaser's on-line systems filing fee; collection and remittance.**

Any dealer licensed under this chapter who uses a Department-approved system of remote electronic filing of documentation necessary to obtain a certificate of title or registration for the purchaser of a vehicle shall collect from the purchaser and remit to the Department-approved electronic systems provider any fees charged for the transaction by the systems provider. Any such fee shall be listed separately on the buyer's order and identified as "on-line systems filing fee."

#### **§ 46.2-1530.2. Dealer's manual transaction fee; use in special fund.**

Every dealer licensed under this chapter shall pay to the Department a fee of \$15 for each manual transaction in excess of 20 transactions per month. For purposes of this section, a "manual transaction" shall be any transaction that is not conducted electronically or at a location run by an agent authorized to act on behalf of the Department pursuant to subsection B of § 46.2-205. Such fee shall be in addition to any fees charged by the Department pursuant to this title for the processing of an application for a new certificate of title or registration of a vehicle. The dealer's manual transaction fee authorized by this section shall not apply to any transaction for which there is no Department-approved remote electronic filing option available. Any dealer who has been charged a dealer's manual

transaction fee shall not collect such transaction fee from the purchaser of the vehicle. All fees collected under the provisions of this section shall be paid into the state treasury and set aside as a special fund to meet the expenses of the Department.

**§ 46.2-1531. Consignment vehicles; contract.**

Any motor vehicle dealer offering a vehicle for sale on consignment shall have in his possession a consignment contract for the vehicle, executed and signed by the dealer and the consignor. The consignment contract shall include:

1. The complete name, address, and the telephone number of the owners.
2. The name, address, and dealer certificate number of the selling dealer.
3. A complete description of the vehicle on consignment, including the make, model year, vehicle identification number, and body style.
4. The beginning and termination dates of the contract.
5. The percentage of commission, the amount of the commission, or the net amount the owner is to receive, if the vehicle is sold.
6. Any fees for which the owner is responsible.
7. A disclosure of all unsatisfied liens on the vehicle and the location of the certificate of title to the vehicle.
8. A requirement that the motor vehicle pass a safety inspection prior to sale.

If any motor vehicle on consignment from a certified nonprofit organization is found not to be in compliance with any safety inspection requirement, the dealer shall furnish any buyer intending to use that vehicle on the public highways a written disclosure, prior to sale, that the vehicle did not pass a safety inspection.

Any dealer offering a vehicle for sale on consignment shall inform any prospective customer that the vehicle is on consignment.

Dealer license plates shall not be used to demonstrate a vehicle on consignment except on (i) motor vehicles with gross vehicle weight of 15,000 pounds or more, (ii) vehicles on consignment from another licensed motor vehicle dealer, and (iii) vehicles on consignment from a nonprofit organization certified pursuant to subsection B of § 46.2-1508.1. The owner's license plates may be used if liability insurance coverage is in effect in the amounts prescribed by § 46.2-472.

**§ 46.2-1532. Odometer disclosure; penalty.**

Every motor vehicle dealer shall comply with all requirements of the Federal Odometer Act and § 46.2-629 by completing the appropriate odometer mileage statement form for each vehicle purchased, sold or transferred, or in any other way acquired or disposed of. Odometer disclosure statements shall be maintained by the dealer in a manner that permits systematic retrieval. Any person found guilty of violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

**§ 46.2-1532.1. Certain disclosures required by manufacturers and distributors.**

Motor vehicle manufacturers and distributors shall affix or cause to be affixed in a conspicuous place to every motor vehicle offered for sale as a new vehicle a statement disclosing the place of assembly or manufacture of the vehicle. For disclosures of place of assembly, the assembly plant shall be the same as that designated by the vehicle identification number.

The provisions of this section shall apply only to motor vehicles manufactured for the 1991 or subsequent model years.



**§ 46.2-1532.2. Certain disclosures required by motor vehicle manufacturers; motor vehicle recording devices.**

A. A manufacturer of a new vehicle sold or leased in the Commonwealth that is equipped with one or more recording devices, as defined in § 46.2-1088.6, installed by the manufacturer shall disclose that fact in the owner's manual for the vehicle.

B. The provisions of this section shall apply only to vehicles manufactured for 2008 and subsequent model years.

**§ 46.2-1533. Business hours.**

Each motor vehicle dealer shall be open for business a minimum of twenty hours per week, at least ten of which shall be between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, except that the Board, on written request by a dealer, may modify these requirements for good cause. Each licensee engaged in business exclusively as a dealer in used mobile homes without inventory shall be open for business a minimum of two consecutive hours per week between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. The dealer's hours shall be posted and maintained conspicuously on or near the main entrance of each place of business.

Each dealer shall include his business hours on the original and every renewal application for a license, and changes to these hours shall be immediately filed with the Department.

**§ 46.2-1534. Signs.**

Each retail motor vehicle dealer's place of business shall be identified by a permanent sign visible from the front of the business office so that the public may quickly and easily identify the dealership. The sign shall contain the dealer's trade name in letters no less than six inches in height unless otherwise restricted by law or contract.

Each licensee engaged in business exclusively as a dealer in used mobile homes without inventory shall be identified by a permanent sign visible from the front of the business office so that the public may quickly and easily identify the dealership. The sign shall contain the dealer's trade name in letters no less than two inches in height unless otherwise restricted by law or contract.

**§ 46.2-1535. Advertisements.**

Unless the dealer is clearly identified by name, whenever any licensee places an advertisement in any newspaper or publication, the abbreviations "VA DLR," denoting a Virginia licensed dealer, shall appear therein.

**§ 46.2-1536. Coercing purchaser to provide insurance coverage on motor vehicle; penalty.**

It shall be unlawful for any dealer or salesperson or any employee of a dealer or representative of either to coerce or offer anything of value to any purchaser of a motor vehicle to provide any type of insurance coverage on the motor vehicle.

Nothing in this section shall prohibit a dealer from requiring that a retail customer obtain automobile physical damage insurance to protect collateral secured by an installment sales contract. Any person found guilty of violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

**§ 46.2-1537. Prohibited solicitation and compensation.**

It shall be unlawful for any motor vehicle dealer or salesperson licensed under this chapter, directly or indirectly, to solicit the sale of a motor vehicle through a pecuniarily interested person, or to

pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a motor vehicle, unless the person is duly licensed as a salesperson employed by the dealer. It shall also be unlawful for any motor vehicle dealer to compensate, in any form whatsoever, any person acting in the capacity of a salesperson as defined in § 46.2-1500 unless that person is licensed as required by this chapter.

**§ 46.2-1538. Salesman selling for other than his employer prohibited.**

It shall be unlawful for any motor vehicle salesman licensed under this chapter to sell or exchange or offer or attempt to sell or exchange any motor vehicle except for the licensed motor vehicle dealer by whom he is employed, or to offer, transfer, or assign any sale or exchange that he may have negotiated to any other dealer or salesman.

**§ 46.2-1539. Inspection of vehicles required; penalty.**

No person required to be licensed as a dealer under this chapter shall sell at retail any motor vehicle which is intended by the buyer for use on the public highways, and which is required to comply with the safety inspection requirements provided in Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of this title unless between the time the vehicle comes into the possession of the dealer and the time it is sold at retail it is inspected by an official safety inspection station. In the event the vehicle is found not to be in compliance with all safety inspection requirements, the dealer shall either take steps to bring it into compliance or shall furnish any buyer intending it for use on the public highway a written disclosure, prior to sale, that the vehicle did not pass a safety inspection. Any person found guilty of violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

**§ 46.2-1540. Inspections prior to sale not required of certain sellers.**

The provisions of §§ 46.2-1158 and 46.2-1539 requiring inspection of any motor vehicle prior to sale at retail shall not apply to any person conducting a public auction for the sale of motor vehicles at retail, provided that the individual, firm, or business conducting the auction shall not have taken title to the vehicle, but is acting as an agent for the sale of the vehicle. Nor shall the provisions of §§ 46.2-1158 and 46.2-1539 requiring inspection of any motor vehicle prior to sale at retail apply to any new motor vehicle or vehicles sold on the basis of a special order placed by a dealer with a manufacturer outside Virginia on behalf of a customer who is a nonresident of Virginia and takes delivery outside Virginia.

**§ 46.2-1541.**

Repealed by Acts 1995, cc. 767 and 816.

**§ 46.2-1542. Temporary registration.**

A. Notwithstanding §§ 46.2-617 and 46.2-628, whenever a dealer licensed by the Board sells or conditionally sells and delivers to a purchaser a motor vehicle, the dealer may issue temporary license plates and a certificate of temporary registration. The temporary license plates and the certificates for temporary registration shall be obtained from the Commissioner or may be printed according to terms set by the Commissioner and may be issued if (i) the dealer has the title or the certificate of origin for the vehicle or (ii) is unable at the time of the sale to deliver to the purchaser the certificate of title or certificate of origin for the vehicle because the certificate of title or certificate of origin is lost or is being detained by another in possession or for any other reason beyond the dealer's control. The temporary registration certificate shall bear its date of issuance, the name and address of the purchaser,

the identification number of the vehicle, the registration number to be used temporarily on the vehicle, the name of the state in which the vehicle is to be registered, the name and address of the person from whom the dealer acquired the vehicle, and whatever other information may be required by the Commissioner. A copy of the temporary registration certificate and a bona fide buyer's order shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the vehicle. One copy of the certificate shall be retained by the dealer, which copy may be retained in electronic format under terms set by the Commissioner, and shall be subject to inspection at any time by the Department's agents. The original of the certificate shall be forwarded by the dealer to the Department directly on issuance to the purchaser if the vehicle is to be titled outside the Commonwealth, along with the physical or electronic application for title. The issuance of a temporary certificate of registration to a purchaser pursuant to this section shall have the effect of vesting sufficient interest in the vehicle in the purchaser for the period that the certificate remains effective for purposes of allowing the purchaser (a) to obtain and provide insurance coverage for the vehicle, including but not limited to insurance indemnifying the purchaser against liability or providing for recovery for damage to or loss of the vehicle and (b) to operate the vehicle as if the purchaser had full rights of ownership, all subject to cancellation by applicable law or agreement between the dealer and the purchaser prior to the time the dealer submits an application for title along with all required fees. If the dealer or purchaser exercises the statutory or contractual rights to cancel a purchaser's contract to buy a vehicle before application for title to the vehicle has been submitted to the Department in the name of the purchaser, the dealer shall have the right to possession of the vehicle without claim of possession by the purchaser within 24 hours of written or oral notice to the purchaser and without regard to the provision of Title 8.9A, provided the dealer's right to possession is enforced otherwise in accordance with law and without breach of the peace. In the event the dealer regains possession of the vehicle, in the same condition, normal wear and tear excepted, as delivered to the purchaser, the purchaser shall have the right to possession of any trade-in and return of any down payment, and if the dealer fails to return the trade-in and/or down payment the dealer may be held liable under § 59.1-200 of the Virginia Consumer Protection Act (§ 59.1-196), in addition to any other rights and remedies available by statute or contract.

B. A temporary certificate of registration issued by a dealer to a purchaser pursuant to this section shall expire when the certificate of title to the vehicle is issued by the Department in the name of the purchaser and the permanent license plates have been affixed to the vehicle, but in no event shall any temporary certificate of registration issued under this section be effective for more than thirty days from the date of its issuance. In the event that the dealer fails to produce the old certificate of title or certificate of origin to the vehicle or fails to apply for a replacement certificate of title pursuant to § 46.2-632, thereby preventing delivery to the Department or purchaser before the expiration of the temporary certificate of registration, the purchaser's temporary rights may terminate and the purchaser shall have the right to return the vehicle to the dealer and obtain a full refund of all payments made toward the purchase of the vehicle, provided the purchaser provides notice to the dealer of a decision to return the vehicle before issuance of a title for the vehicle by the Department, less any damage to the vehicle incurred while ownership was vested in the purchaser, and less a reasonable amount for use not to exceed one-half the amount allowed per mile by the Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes.

C. Notwithstanding subsection B of this section, if the dealer fails to deliver the certificate of title or certificate of origin to the purchaser within thirty days, a second temporary certificate of registration may be issued. However, the dealer shall, not later than the expiration of the first

temporary certificate, deliver to the Department an application for title, copy of the bill of sale, all required fees and a written statement of facts describing the dealer's efforts to secure the certificate of title or certificate of origin to the vehicle. On receipt of the title application with attachments as described herein, the Department shall record the purchaser's rights hereunder to the vehicle and may authorize the dealer to issue a second thirty-day temporary certificate of registration. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the second temporary certificate, the purchaser's rights to the vehicle under this section may terminate and he shall have the right to return the vehicle as provided in subsection B of this section.

D. If the dealer is unable to produce the certificate of title or certificate of origin to the vehicle within the sixty-day period from the date of issuance of the first temporary certificate, the Department may extend temporary registration for an additional period of up to ninety days, provided the dealer makes application in the format required by the Department. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the additional ninety-day period, the purchaser's rights hereunder to the vehicle may terminate and he shall have the right to return the vehicle as provided in subsection B of this section.

E. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may suspend, after a hearing, the right of the dealer to issue temporary certificates of registration.

#### **§ 46.2-1543. Use of old license plates and registration number on another vehicle.**

An owner who sells or transfers a registered motor vehicle may have the license plates and the registration number transferred to another vehicle titled in the owner's name according to the provisions of Chapter 6 (§ 46.2-600 et seq.) of this title, which is in a like vehicle category as specified in § 46.2-694 and which requires an identical registration fee, on application to the Department accompanied by a fee of two dollars or, if the other vehicle requires a greater registration fee than that for which the license plates were assigned, on the payment of a fee of two dollars and the amount of the difference in registration fees between the two vehicles, all such transfers to be in accordance with the regulations of the Department. All fees collected under this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department. For purposes of this section, a motor vehicle dealer licensed by the Board may be authorized to act as an agent of the Department for the purpose of receiving, processing, and approving applications from its customers for assignment of license plates and registration numbers pursuant to this section, using the forms and following the procedures prescribed by the Department. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may suspend, after a hearing, the authority of the dealer to receive, process, and approve the assignment of license plates and registration numbers pursuant to this section.

#### **§ 46.2-1544. Certificate of title for dealers; penalty.**

Except as otherwise provided in this chapter, every dealer shall obtain, on the purchase of each vehicle, a certificate of title issued to the dealer or shall obtain an assignment or reassignment of a certificate of title for each vehicle purchased, except that a certificate of title shall not be required for any new vehicle to be sold as such. Any person found guilty of violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

**§ 46.2-1545. Termination of business.**

No dealer, unless his license has been suspended, revoked, or canceled, shall cease business without a thirty-day prior notification to the Department and the Board. On cessation of the business, the dealer shall immediately surrender to the Board the dealer's certificate of license, all salespersons' licenses, and any other materials furnished by the Board. The dealer shall also immediately surrender to the Department all dealer and temporary license plates, all fees and taxes collected, and any other materials furnished by the Department. After cessation of business, the former licensee shall continue to maintain and make available to the Department and the Board dealer records as set forth in this chapter.

**Article 5. Dealer's Licensing Plates.**

**§ 46.2-1546. Registration of dealers; fees.**

Every manufacturer, distributor, or dealer, before he commences to operate vehicles in his inventory for sale or resale, shall apply to the Commissioner for a dealer's certificate of vehicle registration and license plates. For the purposes of this article, a vehicle is in inventory when it is owned by or assigned to a dealer and is offered and available for sale or resale. All dealer's certificates of vehicle registration and license plates issued under this section may, at the discretion of the Commissioner, be placed in a system of staggered issue to distribute the work of issuing vehicle registration certificates and license plates as uniformly as practicable throughout the year. Dealerships which sold fewer than twenty-five vehicles during the last twelve months of the preceding license year shall be eligible to receive no more than two dealer's license plates; dealerships which sold at least twenty-five but fewer than fifty vehicles during the last twelve months of the preceding license year shall be eligible to receive no more than four dealer's license plates. However, dealerships which sold fifty or more vehicles during their current license year may apply for additional license plates not to exceed four times the number of licensed salespersons employed by that dealership. Dealerships which sold fifty or more vehicles during the last twelve months of the preceding license year shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. A new applicant for a dealership shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. For the purposes of this article, a salesperson or employee shall be considered to be employed only if he (i) works for the dealership at least twenty-five hours each week on a regular basis and (ii) is compensated for this work. All salespersons' or employees' employment records shall be retained in accordance with the provisions of § 46.2-1529. A salesperson shall not be considered employed, within the meaning of this section, if he is an independent contractor as defined by the United States Internal Revenue Code. The fee for the issuance of dealer's license plates shall be determined by the Board, but not more than \$30 per license plate; however, the fee for the first two dealer's plates shall not be less than twenty-four dollars and the fee for additional dealer's license plates shall not be less than ten dollars and forty cents each. For the first two dealer's license plates issued by the Department to a dealer, twenty-four dollars shall be deposited into the Transportation Trust Fund and the remainder shall be deposited into the Motor Vehicle Dealer Fund. For each additional dealer's license plate issued to a dealer, ten dollars and forty cents shall be deposited into the Transportation Trust Fund and the remainder shall be deposited into the Motor Vehicle Dealer Fund.

**§ 46.2-1547. License under this chapter prerequisite to receiving dealer's license plates; insurance required; Commissioner may revoke plates.**

No motor vehicle dealer, unless licensed under this chapter, nor any manufacturer or distributor, unless licensed under Chapter 19 (§ 46.2-1900 et seq.) of this title, shall be entitled to receive or maintain any dealer's license plates. It shall be unlawful to use or permit the use of any dealer's license plates for which there is no automobile liability insurance coverage or a certificate of self-insurance as defined in § 46.2-368 on any motor vehicle. No dealer's license plates shall be issued unless the dealer certifies to the Department that there is automobile liability insurance coverage or a certificate of self-insurance with respect to each dealer's license plate to be issued. Such automobile liability insurance or a certificate of self-insurance shall be maintained as to each dealer's license plate for so long as the registration for the dealer's license plate remains valid without regard to whether the plate is actually being used on a vehicle. If insurance or a certificate of self-insurance is not so maintained, the dealer's license plate shall be surrendered to the Department. The Commissioner shall revoke any dealer's license plate as to which there is no insurance or a certificate of self-insurance. The Commissioner may also revoke any dealer's license plate that has been used in any way not authorized by the provisions of this title.

**§ 46.2-1548. Transferable license plates.**

In lieu of registering each vehicle of a type described in this section, a manufacturer, distributor, or dealer owning and operating any motor vehicle on any highway may obtain a license plate bearing the legend provided in § 46.2-1549 from the Department, on application therefor on the prescribed form and on payment of the fees required by law. These license plates shall be attached to each vehicle as required by subsection A of § 46.2-711. Each plate shall bear a distinctive number, and the name of the Commonwealth, which may be abbreviated, together with the word "dealer" or a distinguishing symbol indicating that the plate is issued to a manufacturer, distributor, or dealer. Month and year decals indicating the date of expiration shall be affixed to each license plate. Any license plates so issued may, during the calendar year or years for which they have been issued, be transferred from one motor vehicle to another, used or operated by the manufacturer, distributor, or dealer, who shall keep a written record of the motor vehicle on which the dealer's license plates are used. This record shall be in a format approved by the Commissioner and shall be open to inspection by any law-enforcement officer or any officer or employee of the Department.

Display of a transferable manufacturer's, distributor's, or dealer's license plate or plates on a motor vehicle shall subject the vehicle to the requirements of §§ 46.2-1038 and 46.2-1056.

All manufacturer's, distributor's, and dealer's license plates shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as may be necessary to distribute the registrations as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license plate shall be renewed annually on application by the owner and by payment of fees required by law, such renewal to take effect on the first day of the succeeding month.

The Commissioner may offer an optional multi-year license plate registration to manufacturers, distributors, and dealers licensed pursuant to this chapter provided that he has chosen to offer optional multi-year licensing to such persons pursuant to § 46.2-1521. When such option is offered and chosen by the licensee, all annual and twelve-month fees due at the time of registration shall be multiplied by the number of years or fraction thereof the licensee will be licensed pursuant to § 46.2-1521.

**§ 46.2-1549. Dealer's, manufacturer's, and distributor's license plates to distinguish between various types of dealers.**

The Commissioner shall provide for the issuance of appropriate franchised or independent dealer's license plates. License plates for manufacturers shall bear the appropriate legend.

**§ 46.2-1549.1. Dealer's promotional license plates.**

In addition to any other license plate authorized by this article, the Commissioner may issue permanent or temporary dealer's promotional license plates to a dealer for use on vehicles held for sale or resale in the dealer's inventory. The design of these license plates shall be at the discretion of the Commissioner. These license plates shall be for use as authorized by the Commissioner. These plates shall be issued under the following conditions:

1. For each permanent promotional license plate issued or renewed, the Commissioner shall charge an annual fee of \$100. Issuance of license plates pursuant to this subdivision shall be subject to the insurance requirement contained in § 46.2-1547. The Commissioner shall limit the validity of any license plate issued under this subdivision to no more than thirty consecutive days. Upon written request from the dealership, the Commissioner may consider an extended use of a license plate issued under this subdivision. The Commissioner's authorization for use of any license plate issued under this subdivision shall be kept in the vehicle on which the license plate is displayed until expiration of the authorization. These license plates shall be included in the number of dealer's license plates authorized under § 46.2-1546 and not in addition thereto.

2. The Commissioner shall limit the validity of each temporary promotional license plate to no more than fourteen consecutive days. For each request, the Commissioner shall charge a fee of twenty-five dollars for the first plate and two dollars for each additional plate. Issuance of license plates pursuant to this subdivision shall be subject to the insurance requirement contained in § 46.2-1547. The Commissioner's authorization for use of any license plate issued under this subdivision shall be kept in the vehicle on which the license plate is displayed until expiration of the authorization. License plates issued under this subdivision shall not be included in the number of dealer's license plates authorized under § 46.2-1546.

**§ 46.2-1550. Use of dealer's and manufacturer's license plates, generally.**

A. Dealer's license plates may be used on vehicles in the inventory of licensed motor vehicle manufacturers, distributors, and dealers in the Commonwealth when operated on the highways of Virginia by dealers or dealer-operators, their spouses, or employees of manufacturers, distributors, and dealers as permitted in this article, which shall include business, personal, and family purposes. Except as otherwise explicitly permitted in this article, it shall be unlawful for any dealer to cause or permit: (i) use of dealer's license plates on vehicles other than those held in inventory for sale or resale; (ii) dealer's license plates to be lent, leased, rented, or placed at the disposal of any persons other than those permitted by this article to use dealer's license plates; and (iii) use of dealer's license plates on any vehicle of a type for which their use is not authorized by this article. Manufacturer's license plates may be used on company vehicles as defined in § 46.2-602.2 operated on the highways of Virginia as provided in § 46.2-602.2 and as permitted by this article. It shall be unlawful for any dealer to cause or permit dealer's license plates to be used on:

1. Motor vehicles such as tow trucks, wrecking cranes, or other service motor vehicles;
2. Vehicles used to deliver or transport (i) other vehicles; (ii) portions of vehicles; (iii) vehicle components, parts, or accessories; or (iv) fuel;
3. Courtesy vehicles; or

4. Vehicles used in conjunction with any other business.

B. A dealer may permit his license plates to be used in the operation of a motor vehicle:

1. By any person whom the dealer reasonably believes to be a bona fide prospective purchaser who is either accompanied by a licensed salesperson or has the written permission of the dealer;
2. When the plates are being used by a customer on a vehicle owned by the dealer in whose repair shop the customer's vehicle is being repaired; or
3. By a person authorized by the dealer on a vehicle that is being driven to or from (i) a point of sale, (ii) an auction, (iii) a repair facility for the purpose of mechanical repairs, painting, or installation of parts or accessories, or (iv) a dealer exchange.

The dealer shall issue to the prospective purchaser, customer whose vehicle is being repaired, or other person authorized under subdivision 3 of this subsection, a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the vehicle. The certificate shall entitle a person to operate with dealer's license plates under (i) subdivision 1 or 2 of this subsection for a specific period of no more than five days or (ii) subdivision 3 of this subsection for no more than twenty-four hours. No more than two certificates may be issued by a dealer to the same person under subdivision 1 or 2 of this subsection for successive periods.

**§ 46.2-1550.1. Use of dealer's license plates and temporary transport plates on certain vehicles.**

Notwithstanding the provisions of § 46.2-1550, dealer's license plates or dealer's temporary transport plates may be used on vehicles being transported (i) from a motor vehicle auction or other point of purchase or sale, (ii) between properties owned or controlled by the same dealership, or (iii) for repairs, painting, or installation of parts or accessories. This section shall also apply to return trips by such vehicles.

**§ 46.2-1550.2. Issuance and use of temporary transport plates, generally.**

The Department, subject to the limitations and conditions set forth in this section and the insurance requirements contained in § 46.2-1547, may provide for the issuance of temporary transport plates designed by the Department to any dealer licensed under this chapter who applies for at least ten plates and who encloses with his application a fee of one dollar for each plate. The application shall be made on a form prescribed and furnished by the Department. Temporary transport plates may be used for those purposes outlined in § 46.2-1550.1. Every dealer who has applied for temporary transport plates shall maintain a permanent record of (i) all temporary transport plates delivered to him, (ii) all temporary transport plates issued by him, and (iii) any other information pertaining to the receipt or the issuance of temporary transport plates which may be required by the Department.

Every dealer who issues temporary transport plates shall insert clearly and indelibly on the face of the temporary transport plates the name of the issuing dealer, the date of issuance and expiration, and the make and identification number of the vehicle for which issued.

The dealer shall issue to the operator of the specified vehicle a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the vehicle. The certificate shall entitle the person to operate with the dealer's temporary transport plate for a period of no more than five days. Temporary transport plates may also be used by the dealer to demonstrate types of vehicles taken in trade but for which he has not been issued dealer's license plates.



**§ 46.2-1551. Use of dealer's license plates or temporary transport plates on certain vehicles traveling from one establishment to another for purpose of having special equipment installed.**

Notwithstanding the provisions of § 46.2-1550, dealer's license plates or temporary transport plates may be used on tractor trucks or trucks for the purpose of delivering these vehicles to another establishment for the purpose of having a fifth wheel, body, or any special permanently mounted equipment installed on the vehicles, and for the purpose of returning the vehicle to the dealer whose plates are attached to the tractor truck or truck whether or not the title to the vehicle has been retained by the dealer, and no other license, permit, warrant, exemption card, or classification plate from any other agency of the Commonwealth shall be required under these circumstances. No other statute or regulation in conflict with the provisions of this section shall be applicable to the extent of the conflict. This section shall also apply to trips into the Commonwealth by a vehicle owned and operated outside the Commonwealth to an establishment within the Commonwealth and to the return trip of that vehicle from the Commonwealth to another state, provided the operator of the vehicle carries on his person when so operating a bill of sale for the fifth wheel, body, or special equipment.

**§ 46.2-1552. Use of dealer's license plates on newly purchased vehicles.**

Notwithstanding the provisions of § 46.2-1550, any dealer who sells and delivers to a purchaser a motor vehicle at a time when the main offices of the Department, its branch offices, or offices of its local agents, are not open for business and the purchaser is therefore unable to register the vehicle, may permit the purchaser to use, for a period not exceeding five days, on the newly purchased vehicle, license plates which have been issued to the dealer, provided that, at the time of the purchase, the dealer executes in duplicate, on forms provided by the Commissioner, a certificate bearing the date of issuance, the name and address of the purchaser, the identification number of the vehicle, the registration number to be used temporarily on the vehicle, the name of the state in which the vehicle is to be registered, and whatever other information may be required by the Commissioner. The original of the certificate and a bona fide bill of sale shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the vehicle under dealer plates. One copy of the certificate shall be retained by the dealer, filed by him, and shall be subject to inspection at any time by the Department's agents. If the vehicle is to be titled and registered in the Commonwealth, application for title and registration shall be made by the purchaser on the first business day following issuance of the certificate and a copy of the certificate shall accompany the applications.

License plates temporarily used by the purchaser shall be returned to the dealer by the purchaser not later than five days after the issuance of the certificate.

**§ 46.2-1552.1. Use of dealer's license plates or temporary transport plates for demonstrating trucks or tractor trucks.**

Notwithstanding any other provision of this chapter, dealer's license plates issued under § 46.2-1548 and temporary transport plates issued under § 46.2-1550.2 may be used on trucks or tractor trucks in the inventory of licensed motor vehicle dealers for the purpose of demonstrating trucks or tractor trucks in the inventory of a licensed dealer by a bona fide prospective purchaser. Any such demonstration vehicle may be loaded in a manner consistent with the prospective purchaser's usual commercial activities. Such use of dealer's license plates on demonstration trucks or tractor trucks in a prospective purchaser's commercial activities shall be for not more than three days or 750 miles, whichever comes first, and shall not thereafter be used on the same truck or tractor truck by the same prospective purchaser for a period of sixty days. The dealer shall issue to the prospective purchaser, or to his authorized agent, a certificate on forms provided by the Department, a copy of which shall be

retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the truck or tractor truck. The certificate shall entitle the person to operate with the dealer's license plate or temporary transport plate for a specific period of no more than three days. This certificate shall be in lieu of any other registration, permit, and motor fuel road tax identification otherwise required by law.

**§ 46.2-1553. Operation without license plate prohibited.**

No manufacturer or distributor or dealer in motor vehicles shall cause or permit any motor vehicle owned by him to be operated or moved on a public highway without there being displayed on the motor vehicle a license plate or plates issued to him, either under § 46.2-711 or under § 46.2-1548, except as otherwise authorized in §§ 46.2-733, 46.2-1554 and 46.2-1555.

**§ 46.2-1554. Movement by manufacturer to place of shipment or delivery.**

Any manufacturer of motor vehicles may operate or move or cause to be moved or operated on the highways for a distance of no more than twenty-five miles motor vehicles from the factory where manufactured or assembled to a railway depot, vessel, or place of shipment or delivery, without registering them and without license plates attached thereto, under a written permit first obtained from the local law-enforcement authorities having jurisdiction over the highways and on displaying in plain sight on each motor vehicle a placard bearing the name and address of the manufacturer authorizing or directing the movement.

**§ 46.2-1555. Movement by dealers to salesrooms.**

Any dealer in motor vehicles may operate or move, or cause to be operated or moved, any motor vehicle on the highways for a distance of no more than twenty-five miles from a vessel, railway depot, warehouse, or any place of shipment or from a factory where manufactured or assembled to a salesroom, warehouse, or place of shipment or transshipment without registering them and without license plates attached thereto, under a written permit first obtained from the local law-enforcement authorities having jurisdiction over the highways and on displaying in plain sight on each motor vehicle a placard bearing the name and address of the dealer authorizing or directing the movement.

**§ 46.2-1556. Operation under foreign dealer's license.**

It shall be unlawful, except as provided for by reciprocal agreement, for any person to operate a motor vehicle or for the owner thereof to permit a motor vehicle to be operated in the Commonwealth on a foreign dealer's license, unless the operation of the motor vehicle on the license is specifically authorized by the Commissioner.

**§ 46.2-1557. Use of certain foreign-registered motor vehicles in driver education programs.**

Dealer's license plates may be displayed on motor vehicles used by Virginia school systems in connection with driver education programs approved by the State Board of Education. In the event of such use of a motor vehicle or vehicles by a school system, any dealer, his employees and agents furnishing the motor vehicle or vehicles shall be immune from liability in any suit, claim, action, or cause of action, including but not limited to, actions or claims for injury to persons or property arising out of such use. Nothing in this section shall authorize the sale of any motor vehicle or vehicles so used in such driver education program as a demonstrator vehicle.

Notwithstanding the provisions of §§ 46.2-1500 and 46.2-1556, school divisions either (i) bordering on Kentucky, Maryland, North Carolina, Tennessee, or West Virginia, or (ii) located in Accomack or Northampton County may use motor vehicles bearing foreign motor vehicle dealer's license plates in connection with their driver education programs.

**§ 46.2-1557.1. Removal of plates by Department of Motor Vehicles investigators; cancellation; reissuance.**

If any Department of Motor Vehicles investigator finds that a vehicle bearing license plates or temporary transport plates issued under this article is being operated in a manner inconsistent with (i) the requirements of this article or (ii) the Commissioner's authorization provided for in this article, the Department of Motor Vehicles investigator may remove the license plate for cancellation. Once a license plate has been cancelled, the dealership may reapply for the license plate. Reissuance of the license plate shall be subject to the approval of the Commissioner and the payment of the fee prescribed for issuance of license plates under this article.

**§ 46.2-1557.2. Penalties for violations of article; service of summons.**

Notwithstanding § 46.2-1507, any person violating any of the provisions of this article shall be guilty of a Class 3 misdemeanor. Any summons issued for any violation of any provision of this article relating to use or misuse of dealer's license plates shall be served upon the dealership to whom the plates were issued or to the person expressly permitting the unlawful use, or upon the operator of the motor vehicle if the plates are used contrary to the use authorized by the certificate issued pursuant to § 46.2-1550.

**Article 6. Issuance of Temporary License Plates by Dealers.**

**§ 46.2-1558. Issuance of temporary license plates to dealers and vehicle owners.**

The Department may, subject to the limitations and conditions set forth in this article, deliver temporary license plates designed by the Department to any dealer licensed under this chapter who applies for at least ten sets of plates and who encloses with his application a fee of two dollars for each set applied for. The application shall be made on a form prescribed and furnished by the Department. Dealers, subject to the limitations and conditions set forth in this article, may issue temporary license plates to owners of vehicles. The owners shall comply with the provisions of this article and §§ 46.2-705, 46.2-706 and 46.2-707. Dealers issuing temporary license plates may do so free of charge, but if they charge a fee for issuing temporary plates, the fee shall be no more than the fee charged the dealer by the Department under this section.

Display of a temporary license plate or plates on a motor vehicle, trailer, or semitrailer shall subject the vehicle to the requirements of §§ 46.2-1038 and 46.2-1056.

**§ 46.2-1558.1. Alternative print-on-demand program for issuance of temporary license plates to dealers and vehicle owners.**

A. Notwithstanding the provisions of § 46.2-1558, the Department may develop and implement procedures and requirements necessary for delivery of temporary license plates to dealers and issuance of temporary license plates by dealers to vehicle owners, using print-on-demand technology.

B. In the event the Department implements a print-on-demand temporary license plate program pursuant to this section, all dealers licensed on or after the effective date of the program shall be required to purchase and issue only print-on-demand temporary license plates.

C. The Commissioner shall not impose a requirement relating to the minimum number of sets of temporary plates that must be purchased by a dealer pursuant to a print-on-demand temporary license plate program implemented under this section.

D. Except as otherwise provided in this section, temporary license plates delivered and issued pursuant to this section shall be subject to all conditions and limitations set forth in this article.

**§ 46.2-1559. Records to be kept by dealers; inspection.**

Every dealer who has applied for temporary license plates shall maintain a permanent record of (i) all temporary license plates delivered to him, (ii) all temporary license plates issued by him, and (iii) any other information pertaining to the receipt or the issuance of temporary license plates which may be required by the Department. Each record shall be kept for at least one year from the date of entry. Every dealer shall allow full access to these records during regular business hours to authorized representatives of the Department and to law-enforcement officers.

**§ 46.2-1560. Application for temporary license plate.**

No dealer shall issue a temporary license plate except on written application by the person entitled to receive the license plate, which application shall be forwarded by the dealer to the Department as provided in § 46.2-1542.

**§ 46.2-1561. To whom temporary plates shall not be issued; dealer to forward application for current titling and registration; misstatements and false information.**

No dealer shall issue, assign, transfer, or deliver temporary license plates to other than the bona fide purchaser or owner of a vehicle, whether or not the vehicle is to be registered in Virginia. If the vehicle is to be registered in Virginia, the dealer shall submit to the Department a written application for the current titling and registration of the purchased vehicle, accompanied by the prescribed fees. Any dealer who issues temporary license plates to a purchaser who fails or declines to request that his application be forwarded promptly to the Department forthwith shall notify the Department of the issuance in the manner provided in this article. No dealer shall lend temporary license plates to any person for use on any vehicle. If the dealer does not have in his possession the certificate of title or certificate of origin he may issue temporary license plates even though the purchaser has current license plates to be transferred. The dealer shall present the title or certificate of origin to the customer within 30 days of purchase and after this transaction is completed the customer shall transfer his current license plates to the vehicle. If the title or certificate of origin cannot be produced for a vehicle within 30 days, a second set of temporary license plates may be issued provided that a temporary certificate of ownership is issued as provided in § 46.2-1542. It shall be unlawful for any person to issue any temporary license plates containing any misstatement of fact, or for any person issuing or using temporary license plates knowingly to insert any false information on their face.

**§ 46.2-1562. Dealer to insert his name, date of issuance and expiration, make and identification number of vehicle.**

Every dealer who issues temporary license plates shall insert clearly and indelibly on the face of each temporary license plate the name of the issuing dealer, the date of issuance and expiration, and the make and identification number of the vehicle for which issued.

**§ 46.2-1563. Suspension of right of dealer to issue.**

The Commissioner, on determining that the provisions of this chapter or the directions of the Department are not being complied with by any dealer, may suspend, after a hearing, the right of a dealer to issue temporary license plates.

**§ 46.2-1564. Plates to be destroyed on expiration.**

Every person to whom temporary license plates have been issued shall destroy them on the thirtieth day after issue or immediately on receipt of the permanent license plates from the Department, whichever occurs first.

**§ 46.2-1565. When plates to expire; refunds or credit.**

Temporary license plates shall expire on the receipt of the permanent license plates from the Department, or on the rescission of a contract to purchase a motor vehicle, or on the expiration of thirty days from the date of issuance, whichever occurs first. No refund or credit of fees paid by dealers to the Department for temporary license plates shall be allowed, except that when the Department discontinues the right of a dealer to issue temporary license plates, the dealer, on returning temporary license plates to the Department, may receive a refund or a credit for them.

**§ 46.2-1565.1. Penalties.**

Any person violating any of the provisions of this article shall be guilty of a Class 3 misdemeanor. Any summons issued for any violation of any provision of this article relating to use or misuse of temporary license plates shall be served upon the dealership to whom the plates were issued or to the person expressly permitting the unlawful use, or upon the operator of the motor vehicle if the plates are used contrary to the use authorized pursuant to § 46.2-1561.

**Article 7. Franchises.**

**§ 46.2-1566. Filing of franchises.**

A. It shall be the responsibility of each motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof to file with the Commissioner by certified mail a true copy of each new, amended, modified, or different form or addendum offered to more than one dealer which affects the rights, responsibilities, or obligations of the parties of a franchise or sales, service, or sales and service agreement to be offered to a motor vehicle dealer or prospective motor vehicle dealer in the Commonwealth no later than sixty days prior to the date the franchise or sales agreement is offered. In no event shall a new, amended, modified, or different form of franchise or sales, service, or sales and service agreement be offered a motor vehicle dealer in the Commonwealth until the form has been determined by the Commissioner as not containing terms inconsistent with the provisions of this chapter. At the time a filing is made with the Commissioner pursuant to this section, the manufacturer, factory branch, distributor, distributor branch, or subsidiary shall also give written notice together with a copy of the papers so filed to the affected dealer or dealers.

B. The Department shall inform the manufacturer, factory branch, distributor, distributor branch, or subsidiary and the dealer or dealers or other parties named in the agreement of a preliminary recommendation as to the consistency of the agreement with the provisions of this chapter. If any of the parties involved have comments on the preliminary recommendation, they must be submitted to the Commissioner within thirty days of receiving the preliminary recommendation. The Commissioner shall render his decision within fifteen days of receiving comments from the parties involved. If the

Commissioner does not receive comments within the thirty-day time period, he shall make the final determination as to the consistency of the agreement with the provisions of this chapter.

**§ 46.2-1567. Exemption of franchises from Retail Franchising Act.**

Franchises subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ 13.1-557 et seq.) of Title 13.1.

**§ 46.2-1568. Coercion of retail dealer by manufacturer or distributor with respect to retail installment sales contracts, extended service contracts or extended maintenance plans, financing, or leasing prohibited; penalty.**

A. It shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative of either, to coerce or attempt to coerce any retail motor vehicle dealer or prospective retail motor vehicle dealer in the Commonwealth to (i) offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or (ii) sell, assign, or transfer any retail installment sales contract or lease obtained by the dealer in connection with the sale or lease by him in the Commonwealth of motor vehicles manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies, leasing company or class of leasing companies, or to any other specified persons by any of the following:

1. By any statement, suggestion, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is express or implied or made directly or indirectly.

2. By any act that will benefit or injure the dealer.

3. By any contract, or any express or implied offer of contract, made directly or indirectly to the dealer, for handling the motor vehicle on the condition that the dealer shall offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or that the dealer sell, assign, or transfer his retail installment sales contract on or lease of the vehicle, in the Commonwealth, to a specified finance company or class of finance companies, leasing company or class of leasing companies, or to any other specified person.

4. By any express or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of his retail sales contracts or leases in the Commonwealth on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons.

B. Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

C. To further avoid any acts or practices, the effect of which may be to lessen or eliminate competition, it shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative thereof, or any person or company affiliated therewith, to condition the provision of lead information to a dealer upon the agreement of the dealer to sell or lease a vehicle to the prospective customer only if the financing or leasing connected with the transaction is effected through a specified finance company or class of finance companies or leasing company or class of leasing companies. For

the purposes of this section, "lead information" means information concerning a prospective customer who contacts or is contacted by the manufacturer or distributor or any person or company affiliated therewith concerning the manufacturer's or distributor's products. The provisions of this subsection, however, shall not prohibit a manufacturer or distributor from so conditioning the provision of lead information concerning any prospective customer who qualifies for any manufacturer-sponsored or distributor-sponsored factory employee, factory retiree, or factory vendor new vehicle purchase program.

D. Any person aggrieved by an action prohibited by this section may seek a hearing, pursuant to § 46.2-1573, against any manufacturer or distributor licensed under this title.

E. Nothing contained in this section shall prohibit a manufacturer or distributor from offering or providing incentive benefits or bonus programs to a retail motor vehicle dealer or prospective retail motor vehicle dealer in the Commonwealth who makes the voluntary decision to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any retail installment sale or lease by him in the Commonwealth of motor vehicles manufactured or sold by the manufacturer or distributor to a specified finance company or leasing company controlled by or affiliated with the manufacturer or distributor.

#### **§ 46.2-1568.1. Discrimination by manufacturers or distributors prohibited.**

No manufacturer or distributor, or any officer, agent, or representative of either, shall discriminate against a dealer holding a franchise of the manufacturer or distributor in favor of another dealer or other dealers of the same line-make in the Commonwealth by:

1. Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in the Commonwealth during a similar time period;

2. Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in the Commonwealth during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in the Commonwealth on substantially comparable terms;

3. Providing lead information to a dealer when the address provided by the prospective customer (or the preferred contact address, if more than one address is provided) is in the relevant market area of another dealer or other dealers of the same line-make without providing or offering to provide the same information on equal terms to the dealer or dealers of the same line-make in whose relevant market area the prospective customer's address (or preferred contact address, if more than one address is provided) is located. The foregoing requirement of this subdivision shall not apply if (i) the lead information is generated under any program administered by an entity in which one or more dealers, together with the manufacturer or distributor, hold an ownership interest, where the program is designed to facilitate sales of motor vehicles through dealers participating in the program, provided that ownership or the right to participate in the entity has been made available to all dealers of the same line-make in the Commonwealth on substantially comparable terms or (ii) the prospective customer requests that the lead information be forwarded to a particular dealer or (iii) the lead information is the result of the prospective customer's request for a specific type of vehicle when the specific type of vehicle in the color and with the equipment desired by the prospective customer is not available at a

dealer or dealers of the same line-make in whose relevant market area the prospective customer's address (or preferred contact address, if more than one address is provided) is located. For purposes of this subsection, "lead information" is information concerning a prospective customer (i) who contacts the manufacturer or distributor in response to an advertisement, a solicitation, or a message broadcast, distributed, or made available to the public by the manufacturer or distributor or (ii) who is contacted by the manufacturer or distributor, and (iii) such contact is in relation to the sale of, service on, or parts or accessories for new or used motor vehicles. This subdivision shall not be construed to permit provision of or access to customer information that is otherwise protected from disclosure by law or by agreement between a dealer and a manufacturer or distributor.

**§ 46.2-1569. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer franchises; delivery of vehicles, parts, and accessories.**

Notwithstanding the terms of any franchise agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or their representatives:

1. To coerce or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which have not been ordered by the dealer.

2. To coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer, factory branch, distributor, or distributor branch, or representative thereof by threat to take or by taking any action in violation of the chapter, or by any other act unfair or injurious to the dealer.

- 2a. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising association.

- 2b. To coerce or require any dealer to establish in connection with the sale of a motor vehicle prices at which the dealer must sell products or services not manufactured or distributed by the manufacturer, factory branch, distributor, or distributor branch, whether by agreement, program, incentive provision, or otherwise.

3. To prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale, or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, unless the franchisor provides written notice to the dealer of its objection and the reasons therefor by certified mail or overnight delivery or other method designed to ensure delivery to the dealer at least thirty days prior to the proposed effective date of the transfer, sale, assignment, or change. No such objection shall be sufficient unless the failure to approve is reasonable. Notwithstanding the provisions of subsection D of § 46.2-1573, the only grounds that may be considered reasonable for a failure to approve are that an individual who is the applicant or is in control of an entity that is an applicant (i) lacks good moral character, (ii) lacks reasonable motor vehicle dealership management experience and qualifications, (iii) lacks financial ability to be the dealer, or (iv) fails to meet the standards otherwise established by this title to be a dealer. No such objection shall be effective to prevent the sale, transfer, assignment, or change if the Commissioner has determined, if requested in writing by the dealer within thirty days after receipt of an objection to the proposed sale, transfer, or change, and after a hearing on the matter, that the failure to permit or honor the sale, transfer, assignment, or change is unreasonable under the circumstances. No franchise may be sold, assigned, or transferred unless (i) the franchisor has been given at least ninety days' prior written notice by the dealer as to the identity, financial ability, and qualifications of the proposed transferee on forms generally utilized by the franchisor to conduct its review, as well as the full agreement for the proposed transaction, and (ii) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business.



3a. To impose a condition on the approval of the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise if the condition would violate the provisions of this title if imposed on the existing dealer.

In the event the manufacturer, factory branch, distributor or distributor branch takes action to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, without a statement of specific grounds for doing so that is consistent with subdivision 3 hereof or imposes a condition in violation of subdivision 3a hereof, that shall constitute a violation of this section. The existing dealer may request review of the action or imposition of the condition in a hearing by the Commissioner. If the Commissioner finds that the action or the imposition of the condition was a violation of this section, the Commissioner may order that the sale or transfer be approved by the manufacturer, factory branch, distributor, or distributor branch, without imposition of the condition. If the existing dealer does not request a hearing by the Commissioner concerning the action or the condition imposed by the manufacturer, factory branch, distributor, or distributor branch, and the action or condition was the proximate cause of the failure of the contract for the sale or transfer of ownership of the dealership, the applicant for approval of the sale or transfer or the existing dealer, or both, may commence an action at law for violation of this section. The action may be commenced in the circuit court of the city or county in which the dealer is located, or in any other circuit court with permissible venue, within two years following the action or the imposition of the condition by the manufacturer, factory branch, distributor, or distributor branch for the damages suffered by the applicant or the dealer as a result of the violation of this section by the manufacturer, factory branch, distributor, or distributor branch, plus the applicant's or dealer's reasonable attorney fees and costs of litigation. Notwithstanding the foregoing, an exercise of the right of first refusal by the manufacturer, factory branch, distributor, or distributor branch pursuant to § 46.2-1569.1 shall not be considered the imposition of a condition prohibited by this section.

4. To grant an additional franchise for a particular line-make of motor vehicle in a relevant market area in which a dealer or dealers in that line-make are already located unless the franchisor has first advised in writing all other dealers in the line-make in the relevant market area. No such additional franchise may be established at the proposed site unless the Commissioner has determined, if requested by a dealer of the same line-make in the relevant market area within thirty days after receipt of the franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter, that the franchisor can show by a preponderance of the evidence that after the grant of the new franchise, the relevant market area will support all of the dealers in that line-make in the relevant market area. Establishing a franchised dealer in a relevant market area to replace a franchised dealer that has not been in operation for more than two years shall constitute the establishment of a new franchise subject to the terms of this subdivision. The two-year period for replacing a franchised dealer shall begin on the day the franchise was terminated, or, if a termination hearing was held, on the day the franchisor was legally permitted finally to terminate the franchise. The relocation of a franchise in a relevant market area, whether by an existing dealer or by a dealer who is acquiring the franchise, shall constitute the establishment of a new franchise subject to the terms of this subdivision. This subdivision shall not apply to (i) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more than ten miles distant from any other dealer for the same line-make; (ii) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more distant than the existing site from all other dealers of the same line-make in that

relevant market area; or (iii) the relocation of an existing new motor vehicle dealer within two miles of the existing site of the relocating dealer.

5. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise, to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the dealer and the Commissioner have received written notice of the franchisor's intentions at least sixty days prior to the effective date of such termination, cancellation, or the expiration date of the franchise, setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested in writing by the dealer within the sixty-day period and, after a hearing on the matter, that the franchisor has shown by a preponderance of the evidence that there is good cause for the termination, cancellation, or nonrenewal of the franchise. In any case where a petition is made to the Commissioner for a determination as to good cause for the termination, cancellation, or nonrenewal of a franchise, the franchise in question shall continue in effect pending the Commissioner's decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court. In any case in which a franchisor neither advises a dealer that it does not intend to renew a franchise nor takes any action to renew a franchise beyond its expiration date, the franchise in question shall continue in effect on the terms last agreed to by the parties. Notwithstanding the other provisions of this subdivision notice of termination, cancellation, or nonrenewal may be provided to a dealer by a franchisor not less than fifteen days prior to the effective date of such termination, cancellation, or nonrenewal when the grounds for such action are any of the following:

a. Insolvency of the franchised motor vehicle dealer or filing of any petition by or against the franchised motor vehicle dealer, under any bankruptcy or receivership law, leading to liquidation or which is intended to lead to liquidation of the franchisee's business.

b. Failure of the franchised motor vehicle dealer to conduct its customary sales and service operations during its posted business hours for seven consecutive business days, except where the failure results from acts of God or circumstances beyond the direct control of the franchised motor vehicle dealer.

c. Revocation of any license which the franchised motor vehicle dealer is required to have to operate a dealership.

d. Conviction of the dealer or any principal of the dealer of a felony.

The change or discontinuance of a marketing or distribution system of a particular line-make product by a manufacturer or distributor, while the name identification of the product is continued in substantial form by the same or a different manufacturer or distributor, may be considered to be a franchise termination, cancellation, or nonrenewal. The provisions of this paragraph shall apply to changes and discontinuances made after January 1, 1989, but they shall not be considered by any court in any case in which such a change or discontinuance occurring prior to that date has been challenged as constituting a termination, cancellation or nonrenewal.

5a. To fail to provide continued parts and service support to a dealer which holds a franchise in a discontinued line-make for at least five years from the date of such discontinuance. This requirement shall not apply to a line-make which was discontinued prior to January 1, 1989.

5b. Upon the involuntary or voluntary termination, nonrenewal, or cancellation of the franchise of any dealer, by either the manufacturer, distributor, or factory branch or by the dealer, notwithstanding the terms of any franchise whether entered into before or after the enactment of this section, to fail to pay the dealer for at least the following:

(1) The dealer cost plus any charges by the franchisor for distribution, delivery, and taxes paid by the dealer, less all allowances paid to the dealer by the franchisor, for new and undamaged motor

vehicles in the dealer's inventory acquired from the franchisor or from another dealer of the same line - make in the ordinary course of business within 18 months of termination;

(2) The dealer cost as shown in the price catalog of the franchisor current at the time of repurchase of each new, unused, undamaged, and unsold part or accessory if such part or accessory is in the current parts catalog and is still in the original, resalable merchandising package and in unbroken lots, except that in the case of sheet metal, a comparable substitute for the original package may be used;

(3) The fair market value of each undamaged sign owned by the dealer that bears a trademark, trade name or commercial symbol used or claimed by the franchisor if such sign was purchased from or at the request of the franchisor;

(4) The fair market value of all special tools and automotive service equipment owned by the dealer that were recommended and designated as special tools or equipment by the franchisor, if the tools and equipment are in usable and good condition, normal wear and tear excepted; and

(5) The reasonable cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and special equipment subject to repurchase hereunder.

The provisions of this subdivision do not apply to a dealer who is unable to convey clear title to the property identified in this subdivision.

For purposes of this subdivision, a voluntary termination shall not include the transfer of the terminating dealer's franchised business in connection with a transfer of that business by means of sale of the equity ownership or assets thereof to another dealer.

5c. If the termination, cancellation, or nonrenewal of the dealer's franchise is the result of the termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch, then, in addition to the payments to the dealer pursuant to subdivision 5b, the manufacturer, distributor, or factory branch shall be liable to the dealer for the following:

(1) An amount at least equivalent to the fair market value of the franchise for the line-make, which shall be the greater of that value determined as of (i) the date the franchisor announces the action that results in termination, cancellation, or nonrenewal, (ii) the date the action that resulted in the termination, cancellation, or nonrenewal first became general knowledge, or (iii) the day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued. In determining the fair market value of a franchise for a line-make, if the line-make is not the only line-make for which the dealer holds a franchise in the dealership facilities, the dealer shall also be entitled to compensation for the contribution of the line-make to payment of the rent or to covering obligation for the fair rental value of the dealership facilities for the period set forth in subdivision 5c (2). Fair market value of the franchise for the line-make shall only include the goodwill value of the dealer's franchise for that line-make in the dealer's relevant market area.

(2) If the line-make is the only line-make for which the dealer holds a franchise in the dealership facilities, the manufacturer, distributor, or factory branch shall also pay assistance with respect to the dealership facilities leased or owned by the dealer as follows: (i) the manufacturer, distributor, or factory branch shall pay the dealer a sum equivalent to the rent for the unexpired term of the lease or three years' rent, whichever is the lesser, or (ii) if the dealer owns the dealership facilities, the manufacturer, distributor, or factory branch shall pay the dealer a sum equivalent to the reasonable rental value of the dealership facilities for three years.

To be entitled to facilities assistance from the manufacturer, distributor, or factory branch, the dealer shall have the obligation to mitigate damages by listing the dealership facilities for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with such real estate agent in the performance of

the agent's duties and responsibilities. If the dealer is able to lease or sublease the dealership facilities on terms that are consistent with local zoning requirements to preserve the right to sell motor vehicles from the dealership facilities and the terms of the dealer's lease, the dealer shall be obligated to pay the manufacturer the net revenue received from such mitigation, but only following receipt of facilities assistance payments pursuant to clause (i) or (ii) of subdivision 5c (2), and only up to the total amount of facilities assistance payments that the dealer has received.

6. To fail to allow a dealer the right at any time to designate a member of his family as a successor to the dealership in the event of the death or incapacity of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership by a member of the family of a deceased or incapacitated dealer if the franchisor has not provided to the member of the family previously designated by the dealer as his successor written notice of its objections to the succession and of such person's right to seek a hearing on the matter before the Commissioner pursuant to this article, and the Commissioner determines, if requested in writing by such member of the family within thirty days of receipt of such notice from the franchisor, and after a hearing on the matter before the Commissioner pursuant to this article, that the failure to permit or honor the succession is unreasonable under the circumstances. No member of the family may succeed to a franchise unless (i) the franchisor has been given written notice as to the identity, financial ability, and qualifications of the member of the family in question, and (ii) the succession to the franchise will not involve, without the franchisor's consent, a relocation of the business.

7. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new vehicles of each make, series, and model needed by the dealer to receive a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation currently being achieved nationally by each make, series, and model covered under the franchise. Upon the written request of any dealer holding its sales or sales and service franchise, the manufacturer or distributor shall disclose to the dealer in writing the basis upon which new motor vehicles are allocated, scheduled, and delivered to the dealers of the same line-make. In the event that allocation is at issue in a request for a hearing, the dealer may demand the Commissioner to direct that the manufacturer or distributor provide to the dealer, within thirty days of such demand, all records of sales and all records of distribution of all motor vehicles to the same line-make dealers who compete with the dealer requesting the hearing.

7a. To fail or refuse to offer to its same line-make franchised dealers all models manufactured for the line-make, or require a dealer to pay any extra fee, or remodel, renovate, or recondition the dealer's existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to receiving a model or a series of vehicles.

7b. To require or otherwise coerce a dealer to underutilize the dealer's facilities by requiring or otherwise coercing a dealer to exclude or remove from the dealer's facilities operations for selling or servicing of a line-make of vehicles for which the dealer has a franchise agreement to utilize the facilities.

8. To include in any franchise with a motor vehicle dealer terms that are contrary to, prohibited by, or otherwise inconsistent with the requirements of this chapter.

8a. For any franchise agreement, to require a motor vehicle dealer to pay the attorney's fees of the manufacturer or distributor related to hearings and appeals brought under this article.

9. To fail to include in any franchise with a motor vehicle dealer the following language: "If any provision herein contravenes the laws or regulations of any state or other jurisdiction wherein this agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by

such laws or regulations, such provision shall be deemed to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force," or words to that effect.

**§ 46.2-1569.1. Manufacturer or distributor right of first refusal.**

Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 45 days of its receipt of the completed proposal for the proposed sale or transfer;
2. The exercise of the right of first refusal will result in the dealer's and dealer's owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;
3. The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership, limited liability company, corporation, or other entity controlled by such persons; and
4. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney's fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney's fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

**§ 46.2-1570. Discontinuation of distributors.**

If the contract between a distributor and a manufacturer or importer is terminated or otherwise discontinued, all franchises granted to motor vehicle dealers in Virginia by that distributor shall continue in full force and shall not be affected by the discontinuance, except that the manufacturer, factory branch, distributor, representative, or other person who undertakes to distribute motor vehicles of the same line-make or the same motor vehicles of a re-named line-make shall be substituted for the discontinued distributor under the existing motor vehicle dealer franchises and those franchises shall be modified accordingly.

**§ 46.2-1571. Warranty and sales incentive obligations.**

A. Each motor vehicle manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its motor vehicle dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, and warranty service on its products and (ii) compensate the dealer for warranty parts, service and diagnostic work required of the dealer by the manufacturer or distributor as follows:

1. Compensation of a dealer for warranty parts, service and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service and diagnostic work to retail customers for nonwarranty service, parts and diagnostic work installed or performed in the dealer's service department unless the amounts are not reasonable. Warranty parts

compensation shall be stated as a percentage of markup, which shall be an agreed reasonable approximation of retail markup and which shall be uniformly applied to all of the manufacturer's or distributor's parts unless otherwise provided for in this section. If the dealer and manufacturer or distributor cannot agree on the warranty parts compensation markup to be paid to the dealer, the markup shall be determined by an average of the dealer's retail markup on all of the manufacturer's or distributor's parts as described in subdivisions 2 and 3 of this subsection.

2. For purposes of determining warranty parts and service compensation paid to a dealer by the manufacturer or distributor, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers. For purposes of determining labor compensation for warranty body shop repairs paid to a dealer by the manufacturer or distributor, internal and insurance-paid repairs shall not be considered in determining amounts charged by the dealer to retail customers.

3. Increases in dealer warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a ninety-day period, whichever occurs first and, in the case of parts, shall be stated as a percentage of markup which shall be uniformly applied to all the manufacturer's or distributor's parts.

4. In the case of warranty parts compensation, the provisions of this subsection shall be effective only for model year 1992 and succeeding model years.

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies in limited production motor vehicles which constitute less than five percent of model production furnished to the dealer at no cost, if the manufacturer or distributor excludes such special high-performance complete engine assemblies in determining whether the amounts requested by the dealer for warranty compensation are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work.

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for warranty service or parts.

This section does not apply to compensation for parts such as components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for nonvehicular, residential purposes. Warranty and sales incentive audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis, and dealer claims for warranty or sales incentive compensation shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for processing the claim shall not constitute grounds for the denial of the claim or reduction of the amount of compensation to the dealer as long as reasonable documentation or other evidence has been presented to substantiate the claim. The manufacturer, factory branch, distributor, or distributor branch shall not deny a claim or reduce the amount of compensation to the dealer for warranty repairs to resolve a condition discovered by the dealer during the course of a separate repair requested by the

customer. Claims for dealer compensation shall be paid within thirty days of dealer submission or within thirty days of the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation. Any chargebacks for warranty parts or service compensation and service incentives shall only be for the twelve-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the eighteen-month period immediately following the date of claim. However, such limitations shall not be effective in the case of intentionally false or fraudulent claims. A dealer shall not be charged back or otherwise liable for sales incentives or charges related to a motor vehicle sold by the dealer to a purchaser other than a licensed, franchised motor vehicle dealer and subsequently exported or resold, unless the manufacturer, factory branch, distributor, or distributor branch can demonstrate by a preponderance of the evidence that the dealer should have known of and did not exercise due diligence in discovering the purchaser's intention to export or resell the motor vehicle.

B. It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to:

1. Fail to perform any of its warranty obligations, including tires, with respect to a motor vehicle;
2. Fail to assume all responsibility for any liability resulting from structural or production defects;
3. Fail to include in written notices of factory recalls to vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of defects;
4. Fail to compensate any of the motor vehicle dealers licensed in the Commonwealth for repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch;
5. Fail to fully compensate its motor vehicle dealers licensed in the Commonwealth for warranty parts, work, and service pursuant to subsection A either by reduction in the amount due to the dealer or by separate charge, surcharge, or other imposition by which the motor vehicle manufacturer, factory branch, distributor, or distributor branch seeks to recover its costs of complying with subsection A, or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally responsible or which the manufacturer, factory branch, distributor, or distributor branch imposes upon the dealer;
6. Misrepresent in any way to purchasers of motor vehicles that warranties with respect to the manufacture, performance, or design of the vehicle are made by the dealer, either as warrantor or co-warrantor;
7. Require the dealer to make warranties to customers in any manner related to the manufacture, performance, or design of the vehicle; or
8. Shift or attempt to shift to the motor vehicle dealer, directly or indirectly, any liabilities of the manufacturer, factory branch, distributor or distributor branch under the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission by the dealer.

C. Notwithstanding the terms of any franchise, it shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its motor vehicle dealers against any losses or damages arising out of complaints, claims, or suits relating to the manufacture, assembly, or design of motor vehicles, parts, or accessories, or other

functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor branch of parts or components for the vehicle or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch. The dealer shall notify the manufacturer of pending suits in which allegations are made which come within this subsection whenever reasonably practicable to do so. Every motor vehicle dealer franchise issued to, amended, or renewed for motor vehicle dealers in Virginia shall be construed to incorporate provisions consistent with the requirements of this subsection.

D. On any new motor vehicle, any uncorrected damage or any corrected damage exceeding three percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231-1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery. Factory mechanical repair and damage to glass, tires, and bumpers are excluded from the three percent rule when properly replaced by identical manufacturer's or distributor's original equipment or parts. Whenever a new motor vehicle is damaged in transit, when the carrier or means of transportation is determined by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the new motor vehicle dealer, the new motor vehicle dealer shall:

1. Notify the manufacturer or distributor of the damage within three business days from the date of delivery of the new motor vehicle to the new motor vehicle dealership or within the additional time specified in the franchise; and

2. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage, unless the damage to the vehicle exceeds the three percent rule, in which case the dealer may reject the vehicle within three business days.

E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within ten days after receipt of notification, or if the dealer rejects the vehicle because damage exceeds the three percent rule, ownership of the new motor vehicle shall revert to the manufacturer or distributor, and the new motor vehicle dealer shall have no obligation, financial or otherwise, with respect to such motor vehicle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to the buyer and an acknowledgement by the buyer is required. If there is less than three percent damage, no disclosure is required, provided the damage has been corrected. Predelivery mechanical work shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling dealer to a new motor vehicle in excess of the three percent rule shall constitute grounds for revocation of the buyer order, provided that, within thirty days of purchase, the motor vehicle is returned to the dealer with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to this section, the dealer shall accept the vehicle and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the vehicle as defined in § 59.1-207.11. Nothing in this section shall be construed to exempt from the provisions of this section damage to a new motor vehicle that occurs following delivery of the vehicle to the dealer.

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C of this section, either party may petition the Commissioner in writing, within thirty days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. However, nothing contained in this section shall give the Commissioner any



authority as to the content or interpretation of any manufacturer's or distributor's warranty. A manufacturer, factory branch, distributor, or distributor branch may not collect chargebacks, fully or in part, either through direct payment or by charge to the dealer's account, for warranty parts or service compensation (including service incentives) or for sales incentives or other sales compensation until 40 days following final notice of the amount charged to the dealer following all internal processes of the manufacturer, factory, factory branch, distributor, or distributor branch. Within 30 days following receipt of such final notice, the dealer may petition the Commissioner, in writing, for a hearing. If a dealer requests such a hearing, the manufacturer, factory branch, distributor, or distributor branch may not collect the chargeback, fully or in part, either through direct payment or by charge to the dealer's account, until the completion of the hearing and a final decision of the Commissioner concerning the validity of the chargeback.

**§ 46.2-1572. Operation of dealership by manufacturer.**

It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control any motor vehicle dealership in the Commonwealth. However, this section shall not prohibit:

1. The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;
2. The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership;
3. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through the dealership for a continuous period of three years prior to July 1, 1972, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community to own and operate the franchise in a manner consistent with the public interest;
4. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof if the Commissioner determines, after a hearing at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community or trade area to own and operate the franchise in a manner consistent with the public interest;
5. The ownership, operation, or control of a dealership dealing exclusively with school buses by a school bus manufacturer or school bus parts manufacturer or a person who assembles school buses; or
6. The ownership, operation, or control of a dealership dealing exclusively with refined fuels truck tanks by a manufacturer of refined fuels truck tanks or by a person who assembles refined fuels truck tanks. Notwithstanding any contrary provision of this chapter, any manufacturer of fire-fighting equipment who, on or before December 31, 2004, had requested a hearing before the Department or the Commissioner in accordance with subdivision 4 for licensure as a dealer in fire-fighting equipment and/or ambulances may be licensed as a dealer in fire-fighting equipment and/or ambulances.

**§ 46.2-1572.1. Ownership of service facilities.**

It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control, either directly or indirectly, any motor vehicle warranty or service facility located in the Commonwealth. Nothing in this section shall prohibit any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, from owning, operating, or controlling any warranty or service facility for warranty or service of motor vehicles owned or operated by the manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof. Nothing contained in this section shall prohibit a motor vehicle manufacturer, factory branch, distributor, or distributor branch from performing service for reasons of compliance with an order of a court of competent jurisdiction or of warranty under Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1.

The preceding provisions of this section shall not apply to manufacturers of refined fuels truck tanks or to persons who assemble refined fuels truck tanks or to persons who exclusively manufacture or assemble school buses or school bus parts.

**§ 46.2-1572.2. Mediation of disputes.**

At any time before a hearing under this article is commenced before the Commissioner, either party to a franchise agreement for the sale or service of passenger cars, pickup trucks or trucks may demand that a dispute be submitted to nonbinding mediation as a condition precedent to the right to a hearing before the Commissioner.

A demand for mediation may be served on the other party and shall be filed with the Commissioner at any time before a hearing is commenced by the Commissioner. The service of the demand for mediation shall, of itself, toll the time required to file requests for hearings and for the time for commencing and completing hearings under this article until mediation is concluded.

A demand for mediation shall be in writing and shall be served upon the other party by certified mail at an address designated in the franchise agreement or in the records of the Department. The demand for mediation shall contain a brief statement of the dispute and the relief sought by the party filing the demand.

Within ten days after the date on which the demand for mediation is served, the Commissioner shall select one mediator from his approved list of mediators or from the lists of hearing officers as set forth in § 2.2-4024. Within twenty-five days of the date of demand, the parties shall meet with the mediator for the purpose of attempting to resolve the dispute. The meeting place shall be within the Commonwealth at a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon the stipulation of both parties.

**§ 46.2-1572.3. Waiver prohibited.**

No motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof shall obtain from a motor vehicle dealer a waiver of the dealer's rights by threatening to impose a detriment upon the dealer's business or threatening to withhold from the dealer any entitlement, benefit, or service required by law. This section shall not apply to good faith settlement of disputes, including disputes pertaining to contract negotiations, in which a waiver is granted in exchange for fair consideration in the form of a benefit conferred upon the dealer; however, this section shall apply to a dispute as to whether a waiver of such rights by a motor vehicle dealer has been obtained in violation of this section.

**§ 46.2-1572.4. Manufacturer or distributor use of performance standards.**

Any performance standard or program that is used by a manufacturer or distributor for measuring dealership performance and may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable and equitable, and if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

**§ 46.2-1573. Hearings and other remedies; civil penalties.**

A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.

B. Hearings before the Commissioner under this article shall commence within ninety days of the request for a hearing and the Commissioner's decision shall be rendered within sixty days from the receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court of Virginia. On request of the Commissioner, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall provide recommendations to the Commissioner within ninety days of the conclusion of the hearing.

C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information by the Motor Vehicle Dealer Board or any other person indicating a possible violation of any provision of this article.

D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6 and 7b of § 46.2-1569 with respect to which the Commissioner is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall consider:

1. The volume of the affected dealer's business in the relevant market area;
2. The nature and extent of the dealer's investment in its business;
3. The adequacy of the dealer's capitalization to the franchisor's standards and the adequacy of the dealer's facilities, equipment, parts, supplies, and personnel;
4. The effect of the proposed action on the community;
5. The extent and quality of the dealer's service under motor vehicle warranties;
6. The dealer's performance under the terms of its franchise;
7. Other economic and geographical factors reasonably associated with the proposed action;

and

8. The recommendations, if any, from a three-member panel composed of members of the Board who are franchised dealers not of the same line-make involved in the hearing and who are appointed to the panel by the Commissioner.

E. An interested party in a hearing held pursuant to subsection A of this section shall comply with the effective date of compliance established by the Commissioner in his decision in such hearing, unless a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is under judicial review and appeal as provided in subsection A of this section. If, after notice to such

interested party and an opportunity to comment, the Commissioner finds an interested party has not complied with his decision by the designated date of compliance, unless a stay or extension of such date has been granted by the Commissioner or the Commissioner's decision is under judicial review and appeal, the Commissioner may assess such interested party a civil penalty not to exceed \$1,000 per day of noncompliance. Civil penalties collected under this subsection shall be deposited into the Transportation Trust Fund.

**§ 46.2-1573.01. Recovery of attorney's fees.**

Any party to a proceeding under § 46.2-1573 who is found to have violated any provision of this article may be ordered by the circuit court before which an application therefor is pending to pay the reasonable attorney's fees and costs incurred by the complaining party, including those attorney's fees and costs incurred as a result of any appeal. Following issuance of the Commissioner's case decision finding that such violation has occurred, the complaining party may make application to an appropriate circuit court for entry of an order awarding it reasonable attorney's fees and costs. Notice of an initial application for entry of such order shall be served in the manner provided by law for the service of a summons in an action. The court shall take such evidence thereon as it deems necessary. Entry of a judgment in conformity with any order awarding such fees and costs shall be stayed pending any appeal of such order or pending any appeal of the Commissioner's underlying decision on the merits. Such application shall be made within sixty days following the date of the Commissioner's order. Venue for the application shall be the circuit court before which any appeal of the Commissioner's decision is pending, and the application may be considered concurrently with consideration of the appeal; otherwise, venue shall be as provided in § 2.2-4003.

**Article 7.1. Late Model and Factory Repurchase Franchises.**

**§ 46.2-1573.1. Late model and factory repurchase franchises.**

Franchised late model or factory repurchase motor vehicle dealers shall have the same rights and obligations as provided for franchised new motor vehicle dealers in Article 7 (§ 46.2-1566 et seq.) of this chapter, mutatis mutandis.

**Article 8. Denial, Suspension, and Revocation of Dealer Licenses.**

**§ 46.2-1574. Acts of officers, directors, partners, and salespersons.**

If a licensee or registrant is a partnership or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license or certificate of dealer registration that any officer, director, or trustee of the partnership or corporation, or any member in the case of a partnership or the dealer-operator, has committed any act or omitted any duty which would be cause for refusing, suspending, or revoking a license or certificate of dealer registration issued to him as an individual under this chapter. Each licensee or registrant shall be responsible for the acts of any of his salespersons while acting as his agent, if the licensee approved of those acts or had knowledge of those acts or other similar acts and after such knowledge retained the benefit, proceeds, profits, or advantages accruing from those acts or otherwise ratified those acts.

**§ 46.2-1575. Grounds for denying, suspending, or revoking licenses or certificates of dealer registration or qualification.**

A license or certificate of dealer registration or qualification issued under this subtitle may be denied, suspended, or revoked on any one or more of the following grounds:

1. Material misstatement or omission in application for license, dealer's license plates, certificate of dealer registration, certificate of qualification, or certificate of title;
2. Failure to comply subsequent to receipt of a written warning from the Department or the Board or any willful failure to comply with any provision of this chapter or any regulation promulgated by the Commissioner or the Board under this chapter;
3. Failure to have an established place of business as defined in § 46.2-1510 or failure to have as the dealer-operator an individual who holds a valid certificate of qualification;
4. Defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business;
5. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of the Commonwealth with respect to the retaking of vehicles under retail installment contracts and the redemption and resale of those vehicles;
6. Having used deceptive acts or practices;
7. Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive in any particular relating to the conduct of the business licensed or registered or for which a license or registration is sought;
8. Having been convicted of any fraudulent act in connection with the business of selling vehicles or any consumer-related fraud;
9. Having been convicted of any criminal act involving the business of selling vehicles;
10. Willfully retaining in his possession title to a motor vehicle that has not been completely and legally assigned to him;
11. Failure to comply with any provision of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 or any regulation promulgated pursuant to that chapter;
12. Leasing, renting, lending, or otherwise allowing the use of a dealer's license plate by persons not specifically authorized under this title;
13. Having been convicted of a felony;
14. Failure to submit to the Department, within thirty days from the date of sale, any application, tax, or fee collected for the Department on behalf of a buyer;
15. Having been convicted of larceny of a vehicle or receipt or sale of a stolen vehicle;
16. Having been convicted of odometer tampering or any related violation;
17. If a salvage dealer, salvage pool, or rebuilder, failing to comply with any provision of Chapter 16 (§ 46.2-1600 et seq.) of this title or any regulation promulgated by the Commissioner under that chapter;
18. Failing to maintain automobile liability insurance, issued by a company licensed to do business in the Commonwealth, or a certificate of self-insurance as defined in § 46.2-368, with respect to each dealer's license plate issued to the dealer by the Department; or
19. Failing or refusing to pay civil penalties imposed by the Board pursuant to § 46.2-1507.

**§ 46.2-1576. Suspension, revocation, and refusal to renew licenses or certificates of dealer registration or qualification; notice and hearing.**

A. Except as provided in § 46.2-1527.7 and subsections B and C of this section, no license or certificate of dealer registration or qualification issued under this subtitle shall be suspended or

revoked, or renewal thereof refused, until a written copy of the complaint made has been furnished to the licensee, registrant, or qualifier against whom the same is directed and a public hearing thereon has been had before a hearing officer designated by the Board. At least ten days' written notice of the time and place of the hearing shall be given to the licensee, registrant, or qualifier by registered mail addressed to his last known post office address or as shown on his license or certificate or other record of information in possession of the Board. At the hearing the licensee, registrant, or qualifier shall have the right to be heard personally or by counsel. The hearing officer shall provide recommendations to the Board within ninety days of the conclusion of the hearing. After receiving the recommendations from the hearing officer, the Board may suspend, revoke, or refuse to renew the license or certificate in question. A Board member shall disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. Any party may request the disqualification of any Board member by stating with particularity the grounds upon which it is claimed that fair and impartial consideration cannot be accorded. The remaining members of the Board shall determine whether the individual should be disqualified. Immediate notice of any suspension, revocation, or refusal shall be given to the licensee, registrant, or qualifier in the manner provided in this section in the case of notices of hearing.

B. Should a dealer fail to maintain an established place of business, the Board may cancel the license of the dealer without a hearing after notification of the intent to cancel has been sent, by return receipt mail, to the dealer at the dealer's residence and business addresses, and the notices are returned undelivered or the dealer does not respond within twenty days from the date the notices were sent. Any subsequent application for a dealer's license shall be treated as an original application.

C. Should a dealer fail or refuse to pay civil penalties imposed by the Board pursuant to § 46.2-1507, the Board may deny, revoke, or suspend the dealer's license without a hearing after notice of imposition of civil penalties has been sent, by certified mail, return receipt requested, to the dealer at the dealer's business address and such civil penalty is not paid in full within thirty days after receipt of the notice.

#### **§ 46.2-1577. Appeals from actions of the Board.**

Any person aggrieved by the action of the Board in refusing to grant or renew a license or certificate of dealer registration or qualification issued under this chapter, or by any other action of the Board which is alleged to be improper, unreasonable, or unlawful under the provisions of this chapter is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

#### **§ 46.2-1578. Appeals to Court of Appeals; bond.**

Either party may appeal from the decision of the court under § 46.2-1577 to the Court of Appeals. These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by law in other cases appealed as a matter of right to the Court of Appeals.

#### **§ 46.2-1579. Equitable remedies not impaired.**

The remedy at law provided by §§ 46.2-1577 and 46.2-1578 shall not in any manner impair the right to applicable equitable relief. That right to equitable relief is hereby preserved, notwithstanding the provisions of §§ 46.2-1577 and 46.2-1578.

## **Article 9. Motor Vehicle Dealer Advertising.**

### **§ 46.2-1580.**

Not set out. (1989, c. 308.)

### **§ 46.2-1581. Regulated advertising practices.**

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

1. A vehicle shall not be advertised as new, either by word or implication, unless it is one which conforms to the requirements of § 46.2-1500.

2. When advertising any vehicle which does not conform to the definition of "new" as provided in § 46.2-1500, the fact that it is used shall be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the vehicle is used. By way of example but not by limitation, "special purchase" by itself is not a satisfactory disclosure; however, such terms as "demonstrator" or "former leased vehicles" used alone clearly express that the vehicles are used for advertising purposes.

3. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy-down said charge or rate which is passed on, in whole or in part, to the purchaser.

4. Terms, conditions, and disclaimers shall be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information, but shall not be used as a means of contradicting or changing the meaning of an advertised statement.

5. The expiration date of an advertised sale shall be clearly and conspicuously disclosed.

6. The term "list price," "sticker price," or "suggested retail price" and similar terms, shall be used only in reference to the manufacturer's suggested retail price for new vehicles or the dealer's own usual and customary price for used vehicles.

7. Terms such as "at cost," "below cost," "\$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of the sale. Terms such as "invoice price," "\$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice or a bona fide bill of sale and the invoice or bill of sale is available for customer inspection.

"Manufacturer's factory invoice" means that document supplied by the manufacturer to the dealer listing the manufacturer's charge to the dealer before any deduction for holdback, group advertising, factory incentives or rebates, or any governmental charges.

8. When the price or credit terms of a vehicle are advertised, the vehicle shall be fully identified as to year, make, and model. In addition, in advertisements placed by individual dealers and not line-make marketing groups, the advertised price or credit terms shall include all charges which the buyer must pay to the seller, except buyer-selected options, state and local fees and taxes, and manufacturer's or distributor's freight or destination charges, and a processing fee, if any. If a processing fee or freight or destination charges are not included in the advertised price, the amount of any such processing fee and freight or destination charge must be (i) clearly and conspicuously disclosed in not less than eight-point boldface type or (ii) not smaller than the largest typeface within the advertisement. If the processing fee is not included in the advertised price, the amount of the processing fee may be omitted from any advertisement in which the largest type size is less than eight-point typeface, so long as the dealer participates in a media-provided listing of processing fees and the dealer's advertisement includes an asterisk or other such notation to refer the reader to the listing of the fees.

9. Advertisements which set out a policy of matching or bettering competitors' prices shall not be used unless the terms of the offer are specific, verifiable and reasonable.

10. Advertisements of "dealer rebates" shall not be used. This does not affect advertisement of manufacturer rebates.

11. "Free," "at no cost," or other words to that effect shall not be used unless the "free" item, merchandise, or service is available without a purchase. This provision shall not apply to advertising placed by manufacturers, distributors, or line-make marketing groups.

12. "Bait" advertising, in which an advertiser may have no intention to sell at the price or terms advertised, shall not be used. By way of example, but not by limitation:

a. If a specific vehicle is advertised, the seller shall be in possession of a reasonable supply of said vehicles, and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, that shall be stated in the advertisement. For purposes of this subdivision, the listing of a vehicle by stock number or vehicle identification number in the advertisement is one means of satisfactorily disclosing a limitation of availability.

b. Advertising a vehicle at a certain price, including "as low as" statements, but having available for sale only vehicles equipped with dealer added cost "options" which increase the selling price, above the advertised price, shall also be considered "bait" advertising.

c. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

13. The term "repossessed" shall be used only to describe vehicles that have been sold, registered, titled and then taken back from a purchaser and not yet resold to an ultimate user. Advertisers offering repossessed vehicles for sale shall provide proof of repossession upon request.

14. Words such as "finance" or "loan" shall not be used in a motor vehicle advertiser's firm name or trade name, unless that person is actually engaged in the financing of motor vehicles.

15. Any advertisement which gives the impression a dealer has a special arrangement or relationship with the distributor or manufacturer, as compared to similarly situated dealers, shall not be used.

#### **§ 46.2-1582. Enforcement; regulations.**

The Board may promulgate regulations reasonably necessary for enforcement of this article. In addition to any other sanctions or remedies available to the Board under this chapter, the Board may assess a civil penalty not to exceed \$1,000 for any single violation of this article. Each day that a violation continues shall constitute a separate violation.